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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 423

LEVERING & GARRIGUES COMPANY, HEDDEN IRON CONSTRUCTION COMPANY, McCLINTIC-MARSHALL COMPANY, ET AL., PETITIONERS,

vs.

PAUL J. MORRIN, INDIVIDUALLY AND AS PRESIDENT OF INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED OCT. [illegible], 1932

CERTIORARI GRANTED NOVEMBER 7, 1932

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INDEX

	Original	Print
Record from district court of the United States, Southern New York	1	1
Bill of complaint	1	1
Exhibit 1—Circular letter No. 257, Sam'l B. Donnelly to members of association, and agreement	25	19
Exhibit 2—Form of agreement	32	24
Affidavit of Luther L. Gadd (omitted in printing)	39	
Subpœna (omitted in printing)	41	
Answer of defendants and counterclaim	43	28
Reply to counterclaim	80	55
Order of reference	84	57
Statement of evidence (omitted in printing)	86	
Report and decision of referee	1966	57
Defendants' exceptions (omitted in printing)	2018	
Plaintiffs' exceptions (" " ")	2032	
Notice of entry of final decree (" " ")	2036	

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 8, 1933

	Original	Print
Final decree	2037	96
Perpetual injunction.....(omitted in printing)..	2041	
Petition for appeal.....(" " ")..	2044	
Allowance of appeal.....(" " ")..	2046	
Assignment of errors.....(" " ")..	2047	
Citation on appeal.....(" " ")..	2165	
Bond on appeal.....(" " ")..	2167	
Order extending time.....(" " ")..	2174	
Stipulation and order waiving equity rule 75 (omitted in printing)	2176	
Stipulation as to contents of record (omitted in printing)	2177	
Stipulation as to record.....(omitted in printing)..	2179	
Clerk's certificate.....(omitted in printing)..	2180	
Proceedings in United States circuit court of appeals, second circuit	2181	99
Opinion, Swan, J.	2181	100
Decree	2197	110
Clerk's certificate.....(omitted in printing)..	2199	
Order allowing certiorari	2200	111
Stipulation as to parts of record to be printed	2201	111

[fols. a-1]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Equity. 31259

LEVERING & GARRIGUES COMPANY, HEDDEN IRON CONSTRUCTION COMPANY, Hay Foundry & Iron Works, and McClintic-Marshall Company, Plaintiffs,

vs.

PAUL J. MORRIN, Individually and as President of International Association of Bridge, Structural & Ornamental Iron Workers; William J. Wade, Individually and as President of Local #40, International Association of Bridge, Structural & Ornamental Iron Workers; Charles McDonald, Individually and as President of Local #361, International Association of Bridge, Structural & Ornamental Iron Workers; Edward Coleman, Individually and as President of Local #52, International Association of Bridge, Structural & Ornamental Iron Workers; Arthur Bolton, Individually and as President of Local #197, International Association of Bridge, Structural & Ornamental Iron Workers; David Baxter, Individually and as President of Local #170, International Association of Bridge, Structural & Ornamental Iron Workers (District Council of New York and Vicinity, International Association of Bridge, Structural & Ornamental Iron Workers); Local #40, International Association of Bridge, Structural & Ornamental Iron Workers; Local #52, International Association of Bridge, Structural & Ornamental Iron Workers; Local #197, International Association of Bridge, Structural & Ornamental Iron Workers; Local #361, International Association of Bridge, Structural & Ornamental Iron Workers; Local #170, International Association of Bridge, Structural & Ornamental Iron Workers; John Snyder, Henry C. Wolf, Owen J. O'Brien, William P. McGinn, Patrick Farrell, Charles Massay, and Earl Calvert, Defendants

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The plaintiffs above-named in the caption hereof bring this, their bill of complaint, against the defendants above [fol. 2] named in the caption hereof, and for their cause of action respectfully show to your Honors:

1. Plaintiff, Levering & Garrigues Company is a corporation of the State of New Jersey, with its principal office in Dunnellen, New Jersey. It is a resident, citizen and inhabitant of the State of New Jersey and is not a resident, citizen or inhabitant of the State of New York; it is engaged in the fabricating and erection of structural iron and steel; it has invested in its business upwards of $1,000,000.00; a large part of that investment is in the State of New York; it has since 1906 employed open shop methods as herein defined with respect to its relations to labor, both in its fabricating and erecting end; prior to the first day of February, 1925, and at the present time it had and has contracts for the construction of work in the State of New York, City of New York, involving an amount in excess of $2,000,000.00.

2. Plaintiff, McClintic-Marshall Company is a corporation of the State of Pennsylvania. It is a resident, citizen and inhabitant of the State of Pennnsylvania and is not a resident, citizen or inhabitant of the State of New York; it is engaged in the fabricating and erecting of structural iron and steel; it has invested in its business upwards of $2,000,000; a large part of which is in the State of New York; it has since 1906 employed open shop methods as herein defined with respect to its relations to labor, both in its fabricating and erecting end; prior to the first day of February, 1925, and at the present time it had and has contracts for the construction of work in the State of New York, City of New York, largely in excess of $3,000,000.

[fol. 3] 3. Plaintiff, Hedden Iron Construction Company, is a corporation organized under the laws of the State of New Jersey; it is a resident, citizen and inhabitant of the State of New Jersey, and is not a resident, citizen or inhabitant of the State of New York; it is engaged in the

business of fabricating and erecting structural iron and steel; it has invested in its business upwards of $200,000.00, a large part of which investment is in New York City; for upwards of ten years last past it has operated in its relation with labor upon the open shop methods, both in its fabricating and erecting department and it has on the first day of February, 1925, contracts for the construction of work in the State of New York, City of New York, involving an amount in excess of $500,000.

4. Plaintiff, Hay Foundry & Iron Works is a corporation organized under the laws of the State of New Jersey, and is a resident, citizen and inhabitant of the State of New Jersey and is not a resident, citizen or inhabitant of the State of New York; it is engaged in the business of fabricating and erecting structural iron and steel and has an investment of upwards of $2,000,000.00, of which upwards of $75,000 is invested in the State of New York. Since 1906 it has operated upon what is known as the open shop method in its relation to labor, both in its fabricating and erecting departments. On the first of February, 1925, it had and has contracts for the construction of work in the City of New York, State of New York, involving an amount in excess of $2,500,000.

5. Defendant, Paul J. Morrin, is a resident, citizen and inhabitant of the State of Missouri; defendant, International Association of Bridge, Structural and Ornamental [fol. 4] Iron Workers is a voluntary labor organization, and is a resident, citizen and inhabitant of the State of Missouri and is not a resident, citizen or inhabitant of the State of New York; defendant, District Council of New York and Vicinity of International Association of Bridge, Structural and Ornamental Iron Workers is a subsidiary organization of the International Association of Bridge, Structural and Ornamental Iron Workers and is a resident, citizen and inhabitant of the State of New York; defendant, Edward Coleman, individually and as president of Local #52, International Association of Bridge, Structural and Ornamental Iron Workers is a resident, citizen and inhabitant of the State of New York; defendant Local #52, International Association of Bridge, Structural and Ornamenal Iron Workers is a subsidiary local of the International Associa-

tion of Bridge, Structural and Ornamental Iron Workers and is a resident, citizen and inhabiant of the State of New York; defendant, Arthur Bolton, individually and as president of Local #197, International Association of Bridge, Structural and Ornamental Iron Workers, is a resident, citizen and inhabitant of the State of New York; defendant, Local #197, International Association of Bridge, Structural and Ornamental Iron Workers, is a subsidiary local of the International Association of Bridge, Structural and Ornamental Iron Workers, and is a resident, citizen and inhabitant of the State of New York; William J. Wade, individually and as President of Local #40, International Association of Bridge, Structural and Ornamental Iron Workers, is a resident, citizen and inhabitant of the State of New York; defendant, Local #40, International Association of Bridge, Structural and Ornamental Iron Workers; is a subsidiary local of the International Association of [fol. 5] Bridge, Structural and Ornamental Iron Workers, and is a resident, citizen and inhabitant of the State of New York; defendant, Charles McDonald, individually and as president of Local #361, International Association of Bridge, Structural and Ornamental Iron Workers, is a resident, citizen and inhabitant of the State of New York; defendant Local #361, International Association of Bridge, Structural and Ornamental Iron Workers, is a subsidiary local of the International Association of Bridge, Structural and Ornamental Iron Workers and is a resident, citizen and inhabitant of the State of New York; defendant, John Snyder, is a business agent of Local #52, International Association of Bridge, Structural and Ornamental Iron Workers, and is a resident, citizen and inhabitant of the State of New York; defendant, Henry C. Wolf is the business agent of Local #52, International Association of Bridge, Structural and Ornamental Iron Workers, and is a resident, citizen and inhabitant of the State of New York; defendant, Owen J. O'Brien, is the business agent of Local #197, International Association of Bridge, Structural and Ornamental Iron Workers, and is a resident, citizen and inhabitant of the State of New York; defendant-, William C. McGinn and Patrick Farrell are organizers of the International Association of Bridge, Structural and Ornamental Iron Workers, and are residents, citizens and inhabitants of the State of New York; defendant, David Baxter, Busi-

ness agent of Local #170, International Association of Bridge, Structural and Ornamental Iron Workers, is a citizen, resident and inhabitant of the State of New York; defendant Local #170, is a subsidiary local of the International Association of Bridge, Structural and Ornamental [fol. 6] Iron Workers, and is a resident, citizen and inhabitant of the State of New York; defendant, Charles Massey, is business agent of Local #40, International Association of Bridge, Structural and Ornamental Iron Workers, and is a citizen, resident and inhabitant of the State of New York; defendant, Earl Calvert, Business Agent of Local #361, International Association of Bridge, Structural and Ornamental Iron Workers and is a citizen, resident and inhabitant of the State of New York.

6. This suit is of a civil nature in equity and the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000.00.

7. The International Association of Bridge, Structural and Ornamental Iron Workers is a voluntary labor organization affiliated with the American Federation of Labor; and it claims, and has claimed, since its organization prior to 1906, authority over all persons engaged in the erection of structural iron and steel, and since, in or about the year 1918, it has claimed authority over all persons engaged in the fabricating of structural iron and steel; and has and does claim jurisdiction of all persons engaged in the fabrication and erecting of ornamental iron and steel and over all persons engaged as riggers and also in the removal of machinery and over all stone derrickmen; it has consistently taken the position that no person can be employed anywhere in the United States or in Canada in said employments, unless he be a member of said organization; it is made up of different locals, the locals having jurisdiction of those engaged in the erecting of structural iron and steel within the territory of New York City is Local No. 40, with its headquarters at 62 East 106th Street, Borough of [fol. 7] Manhattan, the Business Agents of which are Charles Massey and Charles A. Howard; Local No. 361, with its headquarters at 35 Fifth Avenue, Borough of Brooklyn, the Business Agent of which is Earl Calvert. The Local having jurisdiction in the territory of New York

City over those engaged in the erection of ornamental iron and steel is Local #52; the local having jurisdiction over stone derrickmen in the City of New York is Local No. 197, of which local, Owen J. O'Brien, is business Agent. The various local unions are also represented in district councils and the district council claiming jurisdiction over New York City and vicinity is known as District Council of New York and Vicinity, which District Council Locals Nos. 40 and 36, 52 and 197 above mentioned are members.

8. Immediately upon plaintiff determining to operate in their relations with labor upon the open shop method the said International Association of Bridge, Structural and Ornamental Iron Workers proceeded to attempt to force plaintiffs and other employers engaged in the same industry to operate upon a closed union shop basis, and have been and are continuing their attempts down to the present time. The said union through its representatives have repeatedly stated that it was the purpose to prevent any person being employed by the plaintiffs and other- engaged in the erecting of structural iron and steel or in any other branch of the building industry who was not a member of a union, and force and coercion have been used against plaintiffs and other employers to compel the abandonment of the open shop plan and the adoption of a closed union shop, the purpose being not only to unionize the particular industry within the Metropolitan District but the whole coun- [fol. 8] try and also to unionize the entire building industry within the same limits and extending into Canada. It has been the design and purpose of the American Federation of Labor not only to unionize the building industry but all industry so that over the entire country there can be no labor except by one who shall carry a union card.

9. From time to time after 1906 and down to 1919 the International Association of Bridge, Structural and Ornamental Iron Workers, operating through its affiliation with the unions controlling other branches of the building industry, attempted to force the unionization of the erecting of structural iron and steel. The various building trades were, during the period aforesaid, and are members of a voluntary organization in the City of New York known as the New York Building Trades Council of Greater New York and Long Island, of which in 1919 Robert P. Brindle

was President. Under the rules of the New York Building Trades Council of Greater New York and Long Island none of the workers engaged in the particular branches of the industry represented in said council are permitted to work with non-union employees in any other branch of the industry represented in the counsel. The Building Trades Employers' Association, representing the employers, and the New York Building Trades Council of Greater New York and Long Island, representing the employees, from time to time, negotiated and agreed with respect to the employment of labor throughout the Metropolitan District, and the International Association of Bridge, Structural and Ornamental Iron Workers from time to time brought pressure to bear upon the New York Building Trades [fol. 9] Council of Greater New York and Long Island to compel agreements with the employers which would have the effect of unionizing the erecting of structural iron and steel, and as a means to that end, to so bring it about, that employees engaged in other branches of the building industry would not work with non-union men employed in the erection of structural iron and steel. The result of this pressure was that on December 19th, 1919, the Building Trades Employers' Association assuming to act for the members of said association, which included all the branches of the building industry and with respect to the erecting of structural iron and steel approximately 95 per cent of those engaged in the erecting of structural iron and steel within the Metropolitan District, entered in a contract with the Building Trades Council of New York City, Long Island and Vicinity, assuming to represent apparently all of the trades engaged in the building industry, including carpenters, cement and concrete workers, electricians, stone cutters, structural iron and steel workers, painters, roofers, fitters and others, the purpose of which said contract being that after the 1st of January, 1920, all work within the Metropolitan District, including the work of erecting structural iron and steel should be performed exclusively by union labor. A copy of said agreement is hereto annexed and made a part hereof and marked Exhibit 7. Plaintiffs refused to be bound by the action of said Building Trades Employers' Association upon the ground that the action of the said Building Trades Employers' Association was beyond its power and that said contract was

contrary to public policy and void as tending to create a monopoly in labor, to unduly restrict the free flow of labor [fol. 10] and the right to contract and was a violation of the constitutional rights secured to plaintiffs and to labor generally, and plaintiffs continued to operate upon the open shop method.

10. Thereupon the Unions determined to compel plaintiffs and other- engaged in the same industry to employ exclusively union labor, and one of the methods of intimidation and coercion was the use of threats that if any concern engaged in building operations in the City of New York should use open shop methods therein they would be prevented by the action of the Building Trades Council of New York City, Long Island and Vicinity and the Unions associated and affiliated with it, from obtaining or completing contracts if obtained in any place by the action of labor employed in the allied building trades in refusing to work upon buildings, whether union labor was used exclusively by the contractor upon the particular job or not, upon which said contractor had worked. The Code and By-Laws of the said Building Trades Council of New York City, Long Island and Vicinity, as plaintiffs allege upon information and belief contain the following provisions:

"Sec. 56. Working Cards.—This council shall adopt and issue quarterly working card of uniform character. Said card shall be carried by all affiliated members, and no other card shall be recognized by the trades on any job or building.

"Sec. 57. All members of affiliated organizations are compelled to show their working cards when requested by the Business Agents, or other members working on job irrespective of trade, who is himself in possession of a card.

[fol. 11] "Sec. 58. Non-union Conditions.—Under no circumstances will any organization affiliated permit its members to work with non-union men, or with members of a dual or hostile union, to any Trade represented.

"Sec. 59. Immediate Action.—Wherever or whenever non-union men are found working immediate action shall be taken by the Business agents to enforce union conditions

on all work; any trade connected failing to co-operate when notified of said conditions, shall stand suspended, and can only be reinstated upon payment of one hundred dollars ($100.00)."

11. Notwithstanding the attempts made by the Unions to coerce plaintiffs into adopting a closed union shop by calling out workers and by the use of sympathetic strikes and by intimidating owners of buildings for whom plaintiffs had contracts to perform work by threatening that if plaintiffs were permittted to proceed with the work other trades would not complete the building, plaintiffs have continued down to the present time and intend to continue, if permitted, to operate their business upon the open shop method making no discrimination in the employment of labor between those who are or may not be members of the Union.

11. From 1906 down to the present time the said International Association of Bridge, Structural and Ornamental Iron Workers has been attempting throughout the country, through its various locals and district councils, the country being sub-divided, and there being district councils in control of its various parts, to force employers engaged in the fabricating and the erection of structural iron and steel to operate upon closed union shop methods and have suc-
[fol. 12] ceeded in forcing employers to adopt the closed shop over considerable parts of the country, including such large centers as Chicago, Cleveland, Newark and Jersey City.

12. In pursuance of said conspiracy and as a part thereof and a continuation of the purpose arrived at in 1906 the International Association of Bridge, Structural and Ornamental Iron Workers, District Council of Greater New York and Vicinity and locals Nos. 361 and 40, in the month of April, 1924, demanded that the employers in the Metropolitan District covering the City of New York and the southwestern part of Connecticut, enter into an agreement, a copy of which is hereto annexed and made a part hereof and marked Exhibit 2, which said agreement in terms, provides that employers agree to employ only members who are in good standing in the locals or those who have declared their intentions to become members and which said

agreement further provides for a limitation upon the part of apprentices, and that the foreman and assistant foreman shall be members of the Union, and that piece work shall be forbidden, and that there shall be a shop steward on all jobs who will see to it that all men are in good standing and further provides for a supervision of the work of the employers which, in effect, takes the control of the work out of the hands of the employer, and the right to employ or discharge employees.

12. Plaintiffs refused to agree to said agreement with the result that in order to force plaintiffs to agree all the men who were members of the Union employed by plaintiffs were called out on strike on the 1st day of May, 1924.

[fol. 13] 13. Plaintiffs proceeded to fill the places of those employees who left and notwithstanding the fact that the unions used violence towards employees of plaintiffs and picketed the places at which plaintiffs' work was being done and threatened contractors who employed plaintiffs that if plaintiffs were permitted to perform work, the buildings would never be finished because the sympathetic strikes of the other trades would be called, the plaintiffs continued to operate their respective businesses and about the 1st of September, 1924, all of the places of the strikers had been filled and from that time down to on or about the first of February, 1925, plaintiffs have pursued their business without any difficulty whatever.

14. Notwithstanding the failure of said strike the defendants and each and all of them continued their plan of forcing plaintiffs to employ none but union labor and finally on or about September, 1924, formulated a plan of inducing contractors not to engage plaintiffs for the performance of work and as a means to induce or compel general contractors not to give work to plaintiffs the defendants formed a plan of threatening general contractors that if the plaintiffs did perform any work upon said buildings they, the said defendants would cause strikes to be called of workers engaged in other branches of the building industry and thus prevent buildings from being erected and they also, as a part of their plan, proposed to induce owners and architects not to permit plaintiffs to be employed upon any work and as a means to induce or compel owners or

architects to refrain from permitting work to be performed by plaintiffs, the said defendants and each of them proposed to advise said owners or architects that if said plain-
[fol. 14] tiffs were so employed, they, the said defendants would see to it that other branches in the building industry would not complete the buildings. As a means of carrying out this plan the said defendants arranged that the Daily Dodge work reports should be sent to the New York Office of the said International Association of Bridge, Structural and Ornamental Iron Workers for the information of the various local unions and business agents of said International Association of Bridge, Structural and Ornamental Iron Workers. The reports aforesaid give detailed information from the time that any piece of work is contemplated giving the owner and architects of the proposed work the nature of the building as well as the nature of its construction and the contemplated time of beginning such work. Further carrying out their plan as aforesaid, the said defendant, International Association of Bridge, Structural and Ornamental Iron Workers, upon receipt of such information with respect to work, sent letters to the owners and architects of said proposed work urging them to refuse to permit work upon said proposed buildings to be performed by plaintiffs. Further in pursuance of said plans defendants caused the daily dodge reports to be sent to the New York office of the International Association of Bridge, Structural and Ornamental Iron Workers, which reports showed that bids were being taken upon contemplated work and immediately upon receiving such information the defendants caused representatives to call on the various general contractors, to whom work had been awarded urging them to refrain from giving any part of the work to plaintiffs.

15. The building industry within the Metropolitan District which includes the City of New York and Northern
[fol. 15] New Jersey is so unionized in all of its branches except the erection and construction of iron and steel as that no buildings can be erected unless union labor be employed and no person can obtain employment in the building industry with the exception of the erection of iron and steel except he be a member of a labor organization. Labor is controlled by agreement between the employers

upon the one hand and labor organizations upon the other and these agreements, which cover every branch of the industry with the exception of structural iron and steel, provide for the employment of union labor only. This condition of affairs is notorious and is well known to all owners. When the said defendants approach owners and contractors to induce them to refrain from giving or permitting work to be given to plaintiffs because of the known condition of the building industry, general contractors and owners knew that if they do not obey the request of the said defendants, sympathetic strikes would be called and the buildings would not be completed and plaintiffs charge, upon information and belief, that defendants intended to and did in fact threaten contractors and owners that if they gave work to plaintiffs sympathetic strikes would be called and they would be prevented from completing buildings and that sympathetic strikes also would be called upon other jobs upon which the general contractors might be working or which the owner might be constructing notwithstanding the fact that with respect to those jobs exclusively union labor were employed.

16. Since September, 1924, down to the present time, the defendants and each of them have been and are conducting a boycott of plaintiffs in the manner aforesaid using the [fol. 16] means aforesaid and in order to demonstrate to contractors and builders that the said defendants would and could carry out their threats aforesaid and would and could injure contractors and builders who dealt with plaintiffs on or about the 9th day of February, 1925, caused a strike to be called of the members of Local #170 aforesaid, and of the members of Local #52 aforesaid engaged in the erection of ornamental iron and steel. Neither the members of Local #52 nor the members of Local #170 are employees of plaintiffs nor are they engaged in the erection of structural iron and steel; nevertheless the members of said Locals were ordered to cease work on fire escapes, elevator enclosures, iron stairways and grill work, the hoisting of stone and the installation of boiler tanks and machinery on every job on which the structural iron and steel had been erected by plaintiffs or by any other contractor engaged in the business of erecting structural iron and steel employing the open shop methods in the fabrication and erection thereof and it was publicly announced

by the defendant, Paul J. Morrin, president of the International Association of Bridge, Structural and Ornamental Iron Workers that the said strike activities were directed against plaintiffs and other contractors engaged in the business of erecting structural iron and steel upon the open shop method and that a strike would be called on every job in the Metropolitan Area where employers so engaged in erecting structural iron and steel on the open shop method are handling the erection of steel and plaintiffs say that said strikes were but a preliminary to a nation-wide movement to tie up a million dollars worth of work all over the country and it has publicly announced that if necessary ornamental iron workers, riggers and derrickmen employed [fol. 17] by New York builders, erecting structures in other cities would be called out and it was publicly announced that the executive board of the International union had concluded to take the step of calling said strike after a week of conference and that that board would visit all the large steel centers and would endeavor to unionize these cities so as to prevent any non-union workers coming into the Metropolitan District; that in obedience to said orders, the members of said Local #52 did in fact strike and cease work; and did refuse to perform work on any buildings on which steel and iron had been erected by plaintiffs or by others erecting iron and steel by the open shop method; and thereupon and on or about the 25th day of February, 1925, employers engaged in the erection of ornamental iron and steel filed a suit in the Supreme Court of New York for an injunction against the said union to enjoin the said strike and an order to show cause was allowed with ad interim restraint and therefore and on or about the 26th day of February, 1925, in view of the said injunction the said members of Local #52 returned to work. That said strike was in direct violation of a trade agreement existing between Local #52 and the employers erecting ornamental iron and steel and the sole purpose of the calling of said strike was to aid in the boycott of plaintiffs' and other contractors engaged in the erection and construction of iron and steel by the open shop method; that in the meantime the said defendants have threatened general contractors and builders that if they permit work of erecting structural iron and steel to be performed by plaintiffs or by any other employer operating by the open shop method of construc-

tion the defendants will not permit the completion of the [fol. 18] buildings and will cause sympathetic strikes in other trades to be called. If the defendants are permitted to proceed with their boycotting methods plaintiffs will be irreparably injured; general contractors and builders will not dare give work to plaintiffs; already plaintiffs have been injured and contracts which otherwise would have come to plaintiffs have not come to them and in one instance at least a contract was awarded by an owner to another contractor at a higher price than a contractor erecting structural iron and steel by the open shop method agreed to perform it and the said contract was so let solely because of the threat that if it were not so let the building would not be permittted to be completed by the other trades. If the defendants are permitted to pursue the methods aforesaid their entire investment will be destroyed and they will not be able to carry on their business and the result of that will be that there will be no branch of the building industry left in the Metropolitan District in which a person not a member of a labor union can find employment.

The sole purpose of the activities of the said defendants is to compel a putting into effect the closed union shop in the industry of erecting structural iron and steel and inasmuch as this branch of the building industry is the only branch of the building industry where a person not a member of a labor union can secure employment if successful the entire building industry in the entire Metropolitan District will be closed union.

17. There is no dispute between plaintiffs and the said defendants or the members of the said defendants with respect to wages, hours or working conditions. There is no strike of plaintiffs' employees. Plaintiffs have a suffi- [fol. 19] cient number of employees ready and willing and anxious to work and satisfied with wages, hours and working conditions, and actually working. These men will be thrown out of employment if the said defendants succeed by the methods aforesaid in preventing plaintiffs from obtaining any work to perform.

18. Plaintiffs and each of them are all engaged in interstate commerce and plaintiffs charge that the defendants and each of them have formed and are engaged in a conspiracy in restraint of trade and commerce among the

several states; that plaintiffs' steel used in the erection of buildings in the Metropolitan District in the City of New York and in that portion of the Metropolitan District within the State of New Jersey and in other states of the Union are transported between the several states; that all of the steel used in the City of New York by plaintiffs is transported by plaintiffs from other states; that a portion of the steel used by plaintiffs in the construction in the City of New York and in that portion of the Metropolitan District in the State of New Jersey is bought by plaintiffs in other states and transported by plaintiffs to New York, other portions of said steel are fabricated by plaintiffs without the State of New York and brought into the State of New York for erection and other portions of said steel are purchased by said plaintiffs for delivery in the City of New York from manufacturers without the State of New York and by said manufacturers transported to the City of New York; that the purpose and intent of said defendants is to prevent the use of said steel in the Metropolitan District somewhere and wherever erected by plaintiffs; that the purpose of said defendants is also to monopolize all labor within the Metropolitan District and within the States of New York and [fol. 20] Pennsylvania and New Jersey and throughout the country; that the effect of the success of said defendants will be to destroy the interstate traffic of plaintiffs in steel and will also be to prevent any person not a member of a union from obtaining employment in the building industry; that the purpose of defendants is to compel plaintiffs and all other employers engaged in the construction of structural iron and steel in the territory aforesaid to sign agreements with defendants whereby they will agree not to employ laborers except members of said defendants' unions; plaintiffs charge that the said defendants are therefore engaged in a conspiracy in restraint of trade or commerce among the several states and that the said conspiracy is illegal and the jurisdiction of this court is invoked upon that ground.

19. Plaintiffs say that the activities of the said defendants and each of them are not directed against the plaintiffs separately but against them jointly and also against all other employers erecting structural iron and steel jointly; that the effect of the activities of the said defendants against any one of the plaintiffs is coercive of and destruc-

tive of the rights of the other plaintiffs; that the effect of the threats, intimidation and coercion directed to general contractors and to owners is to injure the plaintiffs jointly and plaintiffs have a common interest in the subject matter of this litigation.

20. Plaintiffs and each of them have determined that for the successful operation of their businesses it is necessary that they should be conducted upon the basis of the open shop, they and each of them are entitled to conduct their businesses as open shop free from any unlawful interfer- [fol. 21] ence from anyone or from coercion exercised by anyone. As citizens of the United States under the 14th Amendment to the Constitution of the United States, they are entitled to all the privileges and immunities of citizens of the State of New York; that among the privileges and immunities of the citizens of the State of New York is secured to them by the Constitution of the State of New York the privilege of acquiring, enjoying and possessing and protecting property and of pursuing and obtaining safety and happiness and of not being deprived of property without due process of law; that as a citizen of the United States under the organic law of the United States and the constitution thereof they are entitled to acquire, possess and protect property and to pursue safety and happiness and under the 14th Amendment to the Constitution of the United States no state may make or enforce any law which shall abridge the laws, immunities or provisions of the United States nor deprive any person of life, liberty or property without due process of law, nor deny to any person within the jurisdiction the equal protection of the law; that to deny plaintiffs relief in the instant case would be to deprive them of their immunities and privileges as citizens of the United States to acquire, possess and protect property and to pursue safety and happiness and any statute of the State of New York or any law of the State of New York or any rule of law of the State of New York, which would deny relief to plaintiffs would be in violation of Article 14 of the Amendments to the Constitution of the United States as abridging the privileges and immunities of citizens of the United States and depriving plaintiffs of property without due process of law and denying to plaintiffs the equal pro- [fol. 22] tection of the law; and any such statute or rule of law is unconstitutional and null and void; that any act of

Congress which would deny relief to the plaintiffs is unconstitutional and null and void and in violation of Article 5 of the Constitution as depriving plaintiffs of property without due process of law; that plaintiffs are entitled to the protection of this Court to protect the rights secured to them by the Constitution of the United States as citizens of the United States as aforesaid and the jurisdiction of this Court is invoked upon this ground; that persons desiring to labor in the building industry who may not be members of a union will, if the activities of the said defendants are successful, be deprived of their rights as citizens of the United States secured to them by the Constitution of the United States to acquire, possess and protect property and to pursue safety and happiness and will likewise be deprived of property without due process of law and will be denied the equal protection of the law secured to them by the 14th Amendment to the Constitution of the United States; that if the activities of the said defendants are successful the owners and builders will likewise be deprived of the rights secured to them by the Constitution of the United States and also the Constitution of the State of New York of acquiring, possessing and protecting property and they likewise will be deprived of private property without due process of law and will be denied the equal protection of the law.

21. Plaintiffs further say that this is a case arising under the Constitution and laws of the United States and the jurisdiction of the Court is invoked upon that ground.

[fol. 23] Plaintiffs are without remedy at common law, as the remedy at common law is wholly inadequate, and the loss and damage to their property will be irreparable and therefore pray:

1. That the defendants, who are Paul J. Morrin, individually and as President of International Association of Bridge, Structural and Ornamental Iron Workers; William J. Wade, individually and as President of Local #40, International Association of Bridge, Structural & Ornamental Iron Workers; Charles McDonald, individually and as President of Local #361, International Association of Bridge, Structural and Ornamental Iron Workers; Ed-

ward Coleman, individually and as President of Local #52, International Association of Bridge, Structural & Ornamental Iron Workers; Arthur Bolton, individually and as President of Local #197, International Association of Bridge, Structural & Ornamental Iron Workers; David Baxter, individually and as President of Local #170, International Association of Bridge, Structural and Ornamental Iron Workers; District Council of New York and Vicinity, International Association of Bridge, Structural and Ornamental Iron Workers; Local #40, International Association of Bridge, Structural and Ornamental Iron Workers; Local #52, International Association of Bridge, Structural & Ornamental Iron Workers; Local #197, International Association of Bridge, Structural & Ornamental Iron Workers; Local #361, International Association of Bridge, Structural & Ornamental Iron Workers; Local #170, International Association of Bridge, Structural & Ornamental Iron Workers; John Snyder, Henry C. Wolf, Owen J. O'Brien, William P. McGinn, Patrick Farrell, Charles Massey and Earl Calvert, may answer this bill [fol. 24] and each statement therein contained without oath.

2. That it may be adjudged and decreed that the acts of the defendants mentioned in the above bill are illegal.

3. That the defendants, and each of them, their agents, servants or employees and all others associated with them be perpetually enjoined:

a. From combining or conspiring to compel the said plaintiffs in the prosecution of their work of fabricating and erecting structural iron and steel to employ in the performance of such work only members of a labor union and to refrain from employing any person or persons not members of a labor union.

b. From intimidating, coercing, inducing or advising any person or persons whomsoever to refrain from engaging plaintiffs to perform work.

c. From conducting a boycott of plaintiffs and from inducing or advising a boycott of plaintiffs.

d. From calling, inducing or advising sympathetic strikes.

e. From interfering with, hindering or obstructing plaintiffs' businesses and the operation of plaintiffs' businesses in any manner whatsoever.

f. From doing any act or things whatever to restrict plaintiffs from the free and unhindered control and conduct of plaintiffs' businesses.

g. From ordering, commanding, directing, assisting, aiding or abetting in any manner whatever, any person or persons from committing or attempting to commit any of the aforesaid acts.

[fol. 25] 3. That temporary restraint as aforesaid pending the determination of this cause and the further order of this Court be granted to plaintiffs.

4. That proper prayer for process issue.

Edward Maxson, Attorney for Plaintiff. Merrit Lane, of Counsel.

EXHIBIT 1 ANNEXED TO COMPLAINT

Circular Letter No. 257

Building Trades Employers' Association, 30-34 West 33rd Street, New York

December 19, 1919.

To the members of the Association.

GENTLEMEN: The Board of Governors, on December 17th, 1919, approved the agreement entered into between the Building Trades Employers' Association and the Building Trades Council of the City of New York, as submitted by its Committee, and rescinded all orders in conflict with the agreement. The rescinding order stakes effect on January 1st, 1920. The Board also made the agreement an order of the Board of Governors and directed every member of the association to comply therewith.

Respectfully, Sam'l B. Donnelly, Secretary.

[fol. 26] The agreement reads as follows:

In order to secure continuity of employment and uninterrupted production, it is hereby agreed between the Building Trades Employers' Association of the City of New York and the Building Trades Council of the City of New York, representing and having authority to act for

Art Glass Workers,
Asbestos Workers, Heat and Frost Insulators' Union,
Blue Stone Cutters and Helpers, New York Branch,
United Brotherhood of Carpenters and Joiners of America, District Council of New York and Vicinity;
United Cement Masons' Union, Local 570, O. P. and C. F. I. A.,
Cement and Concrete Workers (Laborers),
Composition Roofers, Damp and Waterproof Workers, Local #4;
Electrical Workers' Union, Local No. 3, I. B. E. W.;
Electrical Workers' Helpers,
Elevator Constructors' Union, Local No. 1;
Elevator Constructors' Helpers,
Granite Cutters, New York Branch, International Association;
United Portable Hoisting Engineers, Local No. 403;
Dock Builders, House Shorers and Sheathpilers, Local No. 1456;
Housesmiths and Bridgemen, Local No. 40;
Housesmiths' Finishers, Local No. 52;
Housesmiths' Helpers,
Marble Cutters, Carvers and Setters, Local #4, B. M. and P. I. U.;
Marble Polishers, Bed Rubbers, Sawyers, Whitestone Association,
Marble Cutters' Helpers, Riggers, Crane and Derrickmen,
Mosaic and Terrazzo Workers' Association,
[fol. 27] Mosaic and Terrazzo Workers' Helpers Association,
Metallic Lathers' Union,
Brotherhood of Painters, Decorators and Paperhangers of America, New York District Council No. 9 and Brooklyn District Council, Queens District Council, Richmond District Council;

Plasterers, Local- Nos. 60, 30, 314 and 408;
Plumbers and Gasfitters, Local No. 463, of Manhattan and the Bronx, and the Brooklyn, Queens and Richmond Locals;
Roofers and Sheet Metal Workers, Local No. 28;
Steam and Hot Water Fitters, Enterprise Assn., Local No. 638;
Steam and Hot Water Fitters' Helpers, Progress Assn., No. 639;
Tile Layers' Union, Local No. 52;
Tile Layers' Helpers, Local No. 53;
Upholsterers District Council;
Wood Lathers' Union, Local Nos. 308 and 6.

That—

(1) The working week shall consist of forty-four (44) Hours.

(2) The rates of wages from January 1st, 1920, to December 31st, 1921, inclusive, shall be as follows:

	Per day 8 hours
Art Glass Workers	$7.00
Asbestos Workers and Insulators	8.00
Blue Stone Cutters	8.00
Carpenters	8.00
Dockbuilders, House Shorers and Sheathpilers	7.50
Cement Masons	8.00
*Cement and Concrete Workers (Laborers)	
[fol. 28] Composition Roofers and Waterproofers	7.00
Do. (Foremen)	7.50
Electrical Workers	8.00
Electrical Workers' Helpers	4.50
Elevator Constructors	8.00
Elevator Constructors' Helpers	6.00
Granite Cutters	8.00
Hoisting Engineers, by the Week	46.75
Hoisting Engineers, by the Day	9.00
Hoisting Engineers, running Compressors extra per wk.	7.00
Housesmiths and Bridgemen, Local No. 40	8.00
Housesmith's Finishers, Local No. 52	8.00

* Now being adjusted.

	Per day 8 hours
Housesmith's Helpers	6.00
Marble Cutters and Setters—April 1, 1920	8.00
Marble Carvers—April 1, 1920	9.00
Marble Polishers, Bed Rubbers & Sawyers, Apr. 1, 1920	7.50
Marble Cutters' Helpers, Riggers, Crane & Derrickmen	6.00
*Mosaic and Terrazzo Workers' Helpers	....
Mosaic and Terrazzo Workers	7.00
Metallic Lathers	8.00
Painters and Decorators	8.00
Plasterers	8.50
Plasterers' Laborers	6.00
Plumbers and Gasfitters	8.00
Roofers and Sheet Metal Workers	8.00
Steam and Hot Water Fitters	8.00
Steam and Hot Water Fitters' Helpers	6.00
Tile Layers	8.00
Tile Layers' Helpers	6.00
Upholsterers	9.25
Wood Lathers	8.00

Provided, should the cost of living materially change, upon five months' notice from the Building Trades Coun- [fol. 29] cil or the Building Trades Employers' Association given prior to January 1, 1921, the wage schedule for the calendar year 1921 shall be reopened and readjusted by the representatives of the parties hereto.

(3) The existing trade agreements between the several trade associations, members of the Building Trade Employers' Association and the Unions of their respective trades shall be continued upon their present terms and conditions until the expiration of this agreement, unless changed by the mutual consent of the parties hereto, except, that the working week and the wage schedule herein agreed upon shall not be changed, except as herein provided for.

(4) Regular or consecutive overtime shall not be worked unless permission to do so shall have been given by a Joint Committee, consisting of the Chairman of the Board of

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* Now being adjusted.

Governors of the Building Trades Employers' Association and the Chairman of the Building Trades Council; provided, that this shall not apply to occasional overtime made necessary by the exigencies of the work.

(5) The unions as a whole or as a single Union shall not order any strike against a member of the Building Trades Employers' Association, neither shall any number of Union men leave the work of a member of the Building Trades Employers' Association, nor shall any member of the Building Trades Employers' Association lock out his employees; and, should any Union or the members of any Union violate this agreement and the violation is not discontinued within one week from the time notice of said vio- [fol. 30] lation is sent to the Building Trades Council, it shall not be considered a violation of this agreement or of any trade agreement if the Building Trades Employers' Association or any member or members thereof proceed to man the work with such men as can be secured, or, in case such violation, if the Building Trades Employers' Association lock out the members of the defaulting Union or declares a general cessation of work. It is further agreed that if workmen not members of the Unions parties hereto are alleged to be employed on any job whereon any member or members of the Building Trades Employers' Association are doing work, it shall be brought immediately to the attention of the Board of Arbitration hereinafter provided for, and if the facts are found by said Board to be as alleged, it shall not be deemed a violation of this agreement, or of any trade agreement, for any member of the Unions above mentioned to refuse to work on the job in question, unless such workmen are justifiably employed in the case above provided for, that is, where a union or a number of members of a union have first violated this agreement.

(6) A permanent Board of Arbitration shall be established, said Board to consist of five members of the Executive Committee of the Board of Governors of the Building Trades Employers' Association and five members of the Executive Committee of the Building Trades Council, to whom shall be referred all disputes that may arise relative to alleged violations of this agreement or the intent and meaning of any part thereof. The decision of said

Board of Arbitration upon any matter submitted to it shall be final and binding upon all parties hereto, and, should said Board of Arbitration fail to agree after three consecu- [fol. 31] tive daily meetings, said Board of Arbitration shall select an umpire, and each side shall make its arguments before the umpire, and his decision shall be final and binding upon all the parties hereto.

(7) This agreement shall apply upon all work performed within the geographical limits of Greater New York and Long Island and in such additional territory as is included in the provisions of the existing trade agreements between the several trade associations and employers and the unions of their trades.

(8) The Union parties to this agreement agree to furnish at all times sufficient men to man the work of the members of the Building Trades Employers' Association.

Dated New York, November 20, 1919.

Signed for the Building Trades Employers' Assn. by Chas. J. Kelly and G. G. Norman.

Signed for the Building Trades Council by Robert P. Brindell, President; John C. Imhof, Michael J. McCluskey, Albert F. Day, William H. Chapman, David Danahy, Richard Pike, John T. Tagghart, Patrick Crowley.

[fol. 32] EXHIBIT 2 ANNEXED TO COMPLAINT

Joint Agreement of Local Union No. 361 and Local Union No. 41

International Association of Bridge, Structural and Ornamental Iron Workers of Greater New York and Vicinity

It is hereby agreed by and between —— —— and Local Unions No. 361 and No. 40 that the conditions governing the handling and erection of structural steel, and all other work within the jurisdiction claims of this organization shall be as follows:

Article 1. Employers agree to employ only members who are in good standing in either Local or those who have de-

clared their intentions of becoming members of same. In event of Union being unable to supply the required number of men to the employer, he shall be at liberty to employ such men as may qualify as mechanics who are willing to become members, after meeting all requirements of Union. Employers representative to advise the union at least forty-eight (48) hours in advance of his need of additional men and no workman shall be discriminated against because of his connection with this Union.

Article 2. Eight hours shall constitute a day's work, the hours of labor shall be between (8) o'clock and five (5) o'clock P. M. except on Sat. when the hours shall be from eight (8) to twelve (12) o'clock noon. It shall be optional with the employer and the employee whether the lunch hour be one hour or one-half hour.

[fol. 33] Article 3. Employers shall be at liberty to hold not more than two (2) and one-half days of a man's wages to enable the employer to prepare the pay roll.

Article 4. Employers agree to pay the men's wages due them weekly on a regular pay day. If on Sat. the men's wages due them must be paid not later than twelve o'clock noon. If any other working day the men's wages due them must be paid not later than five (5) o'clock P. M. on the job. If men are compelled to go from the job they are working on to the office of the employer for wages due them they shall be paid for their time and carfare. When the men are compelled to wait for wages due them after the hours stated above, they shall be paid double time rate of wages for the length of time they are compelled to wait after the regular stated hour of the regular stated pay day. Men must be paid in legal currency only.

Article 5. Holidays or days observed as such: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and Sat. twelve (12) o'clock noon until Monday morning eight (8) A. M. The scale of wages for labor done on these days shall be paid for at the rate of double time, no labor shall be performed on Labor Day by members of either Local.

Article 6. Apprentices shall be allowed at the rate of one apprentice to every seven mechanics and his duties shall be such work as will enable him to become a skilled mechanic, but under no consideration will he be allowed to [fol. 34] have charge of any part of the work, such as handling plans or issuing orders, and it is understood that no apprentice shall be employed by an employer who has not the required number of mechanics in his employ.

Article 7. Men who quit on any job for any employer shall wait for money due them until the regular pay day. Members of either Local on being discharged or laid off, shall be paid in full immediately or at the office of the employer if located in New York City. Any member failing to receive his money after such discharge or lay off, shall receive waiting time at the rate of straight time, providing he shall report to job while waiting for money due him and must report to Financial Secretary at once. Men who are discharged or laid off shall be given a written statement of wages due them by the foreman and shall be allowed one hour if compelled to go to the office for his money.

Article 8. There shall be a foreman on each job. Foreman and assistant foreman shall be members of this Union. Foreman and assistant shall be paid straight time and receive their pay for all hours over eight hours at the rate of double time. They shall be paid for all holidays or all days observed as such. All foremen to receive at least three dollars per day more than the men and all assistant foremen at least one and one-half dollars per day more than the men.

Article 9. This Union forbids piece work of all kinds.

Article 10. The scale of wages shall be as follows: Men [fol. 35] classed as Bridge and Structural workers shall receive $1.50 per hour. Men classed as apprentices shall receive $1.00 per hour.

Article 11. There shall be a steward on all jobs, who will see that all men are in good standing; any grievance arising on the job the steward will take the matter up with the superintendent. If it cannot be settled will call for business representative, who shall use all means to adjust all grievances without stopping the work. The business repre-

sentative to be allowed at all times on the job. First man working on any job must report same to the Secretary.

Article 12. Men shipping out shall receive traveling time and expenses. All members who are shipped out to a job through the offices of either Local and fail to live up to the agreement or refuse to work of their own accord shall be held responsible by same. The employer shall be reimbursed with the actual expense in each case by the Union.

Article 13. Where there are two or more shifts on one job, the hours between five (5) P. M. and eight (8) A. M. shall be paid for at the rate of double time.

Article 14. When any member of either Local is told to report for work and after reporting for work through no fault of his own the foreman fails to put him to work, he shall receive two hours pay. When the workmen are sent yard or job they shall be paid for time consumed in such trip and carfare. When members are employed beyond the city limits they shall be paid all additional carfare and be allowed one hour extra pay for traveling time.

[fol. 36] Article 15. This agreement shall apply to all men employed in the erection and construction of all steel and cast iron structures, viz.: Bridges and viaducts, stringing temporary or permanent cables for suspension bridges, steel stack, steel coal bunkers, ash coal and ore conveyors, any conveyors or main chute, car dumper, jail and cell work, steel grain elevators and tanks, steel stand pipes, steel water tanks, vat works, iron and steel bulkheads, steel towers, blast furnaces, including shiphoists, toprigging, ash pans, ash chutes, hoisting and erection of all stokers. All structural work pertaining to building or in support of boilers including foundation beams, columns, beams or girders, mullions, steel ducts and steel buildings. Also any work required to change or alter in the field material shipped from the shop, such as framing, cutting or drilling. Corrugated steel work when attached to steel frames, the handling and operation of derrick or excavation work which are to be used later for the erection of steel.

The erection and removal of necessary false work, derricks and travelers and steel scaffolding. The moving and placing of heavy machinery on bridges and buildings. The handling of derricks at all storage points, all burning and

welding machines used in construction or alteration of buildings or bridges. The erection of all signs, vaults and safety deposit boxes and dismantling of same and all other work pertaining to same. Also wrecking of bridges, metal lumber, viaducts and steel buildings, and all concrete reinforcement. All guide frames on gasolmeters and all blacksmith work pertaining to same, all lintels on buildings and enamel steel tanks.

[fol. 37] Article 16. The territory covered by this agreement shall be Brooklyn and Long Island, Staten Island and New York, the joint territory of Local Unions No. 361 and No. 40 within a radius of seventy-five miles (75) from City Hall, New York City, New York State.

This agreement to take effect on and after —— —, ——.
Local No. 361, —— ——. Employer, —— ——.
Local No. 40, —— ——.

[fols. 38-42] *Duly sworn to by John L. Hay, Jr. Jurat omitted in printing.*

[fol. 43] In United States District Court

[Title omitted]

Answer

To the Honorable the Judges of the United States District Court for the Southern District of New York:

Defendants, Paul J. Morrin, individually and as President of International Association of Bridge, Structural & [fol. 44] Ornamental Iron Workers, William J. Wade, individually and as President of Local #40, International Association of Bridge, Structural & Ornamental Iron Workers, Charles McDonnell (impleaded as Charles McDonald), individually and as President of Local #361 (impleaded as Local #381), International Association of Bridge, Structural & Ornamental Iron Workers, Edward Coleman, individually and as President of Local #52, International Association of Bridge, Structural and Ornamental Iron Workers, Arthur Bolton, David Baxter, individually and as Presi-

dent of Local #170, International Association of Bridge, Structural & Ornamental Iron Workers, Owen J. O'Brien, William P. McGinn, Patrick Farrell, Charles Massey, and Earl Calvert answering the bill of complaint of the plaintiffs above named, by Frank P. Walsh, their attorney:

1. Deny any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs 1, 2, 3, and 4 thereof, except the allegations in each of said paragraphs that the plaintiffs therein named is engaged in the fabricating and erection of structural iron and steel.

2. Defendant, Arthur Bolton, denies the allegations contained in paragraph 5, that he is President of Local #197, International Association of Bridge, Structural & Ornamental Iron Workers, and denies the allegation that he is a resident, citizen and inhabitant of the State of New York, and alleges that he is and on March 11, 1925, was a resident, citizen and inhabitant of the State of New Jersey.

3. Defendant, Charles McDonnell (impleaded as Charles McD ald), denies that he is President of Local #381, as stated in the caption of the complaint in this action.

[fol. 45] 4. Defendant, William P. McGinn, denies the allegation contained in paragraph 5, that he is a resident, citizen and inhabitant of the State of New York, and alleges that he is a resident, citizen and inhabitant of the State of Massachusetts.

Defendants further answering:

5. On information and belief deny the allegation contained in paragraph 6, that the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000.00.

6. On information and belief deny the allegations contained in paragraph 7, except the allegations as to the makeup of the different locals in New York and vicinity (said allegations beginning "It is made up of different locals" and continuing to the end of the paragraph).

7. On information and belief deny each and every allegation contained in paragraph 8.

8. On information and belief deny the allegations contained in paragraph 9, that defendant International Association, and its affiliated unions attempted to force unionization; deny the allegations thereof that defendants brought pressure to compel agreements with employers; and as to the residue of the allegations therein contained, aver, on information and belief, that said allegations are wholly immaterial.

9. On information and belief deny the allegations contained in paragraph 10, that the unions determined to compel plaintiffs and others and used the threats mentioned therein.

10. Deny any knowledge of information sufficient to form a belief as to the allegations contained in paragraph 11.

[fol. 46] 11. On information and belief deny each and every allegation contained in the second paragraph marked 11.

12. On information and belief deny the allegations contained in paragraph 12, as to the conspiracy and demands pursuant thereto, therein alleged.

13. On information and belief deny the allegations contained in the second paragraph marked 12, except the allegation that plaintiffs refused to agree to the agreement therein mentioned.

14. On information and belief deny the allegations contained in paragraph 13, except the allegation that plaintiffs proceeded to fill the places of their employees who left.

15. On information and belief deny the allegations contained in paragraph 14, to the effect that the strike of May, 1924, failed, that defendants continued any plan of forcing plaintiffs, that defendants formulated the plan of threatening general contractors and in this behalf allege, that the strike did not fail but still continues; that the use of the Dodge Daily Reports and letters soliciting patronage of owners and architects for employers of union labor therein mentioned was and is legitimate and lawful.

16. On information and belief deny the allegations contained in paragraph 15, as to the calling of sympathetic

strikes and threats by defendants and, on information and belief aver that the other allegations therein are immaterial.

17. On information and belief deny the allegations contained in paragraph 16, touching the conducting of a boycott and strike by defendants and public announcement by [fol. 47] defendant, Paul J. Morrin, and deny the allegation that the strike of members of Local #52 was in violation of the trade agreement and for the purpose therein mentioned; deny that the defendants threatened general contractors and builders as therein alleged; deny that plaintiffs will be irreparably injured; that general contractors and builders will not dare give work to plaintiffs and that plaintiffs have already been injured; and deny the allegations touching the destruction of the entire building industry in the Metropolitan District, and as to the residue of allegations therein contained, on information and belief, aver that the same are immaterial.

18. On information and belief deny the allegations contained in paragraph 17, except that defendants have no knowledge or information sufficient to form a belief as to the allegations that plaintiffs have a sufficient number of employees, as alleged.

19. On information and belief deny the allegations contained in paragraph 18, that defendants have formed and are engaged in the conspiracy therein alleged and deny the allegations to the effect that the purpose of defendants is to monopolize all labor as alleged therein; deny the allegations therein that the success of defendants will destroy the inter-state traffic of plaintiffs in steel and will prevent any person from obtaining employment in the building industry and in this behalf allege that the acts of defendants mentioned in the complaint herein are wholly intra-state transactions and have no relation whatever to inter-state commerce, and, on information and belief, aver that the allegations contained in paragraph 18, touching the alleged [fol. 48] conspiracy or restraint of trade or commerce among the several states and the destruction of inter-state traffic of the plaintiffs in steel, are entirely false and embodied in the complaint without the slightest cause or reason therefore and only for the ulterior purpose of imposing upon this court.

20. On information and belief deny each and every allegation contained in paragraph 19.

21. Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 20, as to what plaintiffs have determined to be necessary to the successful operation of their business and deny "that it is necessary that the business of plaintiffs should be conducted upon the basis of the open shop"; deny the allegations therein that to deny plaintiffs relief herein would deprive them of their immunities and privileges as citizens of the United States or of the State of New York; deny the allegation therein contained as to the effect of any rule of law of the State of New York, which will deny relief to plaintiffs is unconstitutional; deny that if defendants are successful the owners and builders will be deprived of any of their constitutional rights; and as to the residue of the allegations therein contained, on information and belief, aver that said allegations are wholly immaterial and are imported into the complaint only with the view to imposing upon the court through an effort to raise a false and meretricious issue whereby plaintiffs hope to invoke and secure Federal Court jurisdiction, with the possibility of securing thereby a temporary injunction, which they may publish to the world and use against the members of defendant, International Association to terrorize them through the implied threat of contempt pro-
[fol. 49] ceedings and to disrupt and disorganize defendants' organization International Association, before a trial herein can be had, the charges of plaintiffs disproved, and the defendants relieved of the injunction order thereby sought.

22. On information and belief deny the allegations of paragraph 21, that this action arises under the constitution and laws of the United States, and the allegation therein that plaintiffs are without remedy at common law, that the remedy at common law is wholly inadequate and the loss and damage to plaintiffs' property will be irreparable.

For a second and separate defense and by way of objection for want of parties plaintiff herein, allege, on information and belief:

23. That the parties plaintiff herein are not the real parties in interest in that said plaintiffs are only a few of the employers of members of defendant, International Association, in the United States and especially in Greater New York and vicinity, and that all said employers are united in interest with the four plaintiffs named herein and are and for many years have been engaged in a conspiracy against defendants with the object and purpose of destroying the national, district and local organizations of defendants, crushing the union labor movement in the Iron and Steel industries (especially the fabrication and erecting of bridge, structural and ornamental steel and iron work throughout the United States) and substituting therefor what is known as the open or non-union shop. That said employers are and for many years have been organ- [fol. 50] ized into national and local associations, among which are the National Steel Fabricators Association, the Bridge Builders and Structural Society, the Structural Steel Society, the American Erectors Association, the National Erectors Association, and the Iron League of New York (which until July, 1920, was known as the Iron League Erectors Association). That said National Erectors Association is a national organization of employers engaged in the manufacture and fabrication and erection of steel throughout the United States, having its office in the City of New York and district offices in Pittsburgh, Cleveland, Kansas City, Milwaukee and Philadelphia, and includes among its members many of the largest and most influential concerns in the industry, the names of all of its members being unknown to defendants. That the Iron League of New York is an unincorporated association of seven or more members, employers of labor engaged in the erection of iron and steel in Greater New York and vicinity, and that among its members are the following plaintiffs in a certain action instituted in the New York Supreme Court, New York County, on or about June 8th, 1924, and entitled:

[fol. 51] Supreme Court, County of New York. Post & McCord, Inc.; Levering & Garrigues Company; George A. Just Company; Easton Structural Steel Company; Harden Contracting Company; Facey Erection Company; Hay

Foundry & Iron Works; Hinkle Iron Company; Communipaw Company; Harris Structural Steel Company; Hedden Iron Construction Company; McClintock-Marshall Company; Alfred E. Norton Company, Inc.; Eidlitz & Ross, Plaintiffs, against Paul J. Morrin, individually and as president of International Association of Bridge, Structural and Ornamental Iron Workers; William J. Wade, individually and as president of Local No. 40, International Association of Bridge, Structural and Ornamental Iron Workers; Charles Massey, Charles A. Howard, Charles McDonnell, individually and as President of Local No. 361, International Association of Bridge, Structural and Ornamental Iron Workers; Theodore M. Brandle, individually and as president of District Council of New York and vicinity, International Association of Bridge, Structural, and Ornamental Iron Workers; John Lingen; Patrick J. Commerford, Earl Calvert, Victor Gosselin and John J. Donnelly, Defendants,

and that each of the members of said Association, and especially the parties hereinbefore named as members of the Iron League of New York, plaintiffs in said Post & McCord action, are members of National Erectors Association [fol. 52] in Greater New York and that each of said parties is united in interest in the matters of the complaint with the four plaintiffs named therein; that said four plaintiffs were named as such, as a part of the conspiracy of all said parties with the purpose of imposing upon this Court, by the use of said plaintiffs through the alleged diversity of citizenship herein, whereas plaintiffs well knew that if all th real parties in interest were joined as plaintiffs herein, the Unted States District Court would be deprived of jurisdiction of the controversy; and that all said employers are proper and necessary parties to this action and if any of them decline to come in as plaintiffs, they should be made parties defendant herein.

24. On information and belief that all said employers are engaged in one or more branches of the steel and iron industry and are large employers of labor in the various branches of said industry comprehended within the jurisdiction of defendant, International Association, accorded to it as an International Labor Union Organization by the American Federation of Labor. That all said employers

have a common purpose in the organizations hereinbefore mentioned to oppress and destroy defendant, International Association, as a prime prerequisite to the general establishing of an open or non-union shop plan toward which their concerted efforts are directed; and that through the various associations hereinbefore mentioned said employers are contributing of their funds and the personal activities of their officers and agents, toward the attainment of that end.

25. The reason why the presence of said parties is required in this suit is that each of said parties is interested [fol. 53] in and a member of the conspiracy against defendants hereinbefore mentioned and that without their presence herein complete justice cannot be done in the premises.

26. On information and belief each and every employer herein mentioned is in every aspect hereof an indispensable party hereto for the reasons hereinbefore mentioned.

27. On information and belief the parties mentioned as plaintiffs in the Post & McCord action, hereinbefore mentioned, have offices in the City of New York, and are actively engaged in business in the city and State of New York, and are within the jurisdiction of this court.

For a third and separate defense:

28. Defendants repeat and re-allege the allegations contained in the foregoing Second and Separate Defense and further allege that the parties plaintiff herein have been improperly and collusively made and joined as parties plaintiff for the purpose of creating a case cognizable under the Judiciary Code and with the purpose of persuading this court that the four parties plaintiff herein named as such are the only parties aggrieved by the acts alleged against defendants in the complaint, although the plaintiffs have, apparently, unwittingly, admitted that "all other employers erecting structural iron and steel" are interested with them, as appears by the allegations of paragraph 19 of the complaint, wherein plaintiffs also allege.

"That the effect of the activities of the said defendants against any one of the plaintiffs is coercive of and destruc- [fol. 54] tive of the rights of the other plaintiffs, that the

effect of the threats, intimidation and coercion directed toward general contractors and to owners is to injure the plaintiffs jointly and plaintiffs have a common interest in the subject matter of this litigation" (see complaint, paragraph 19);

wherefore defendants aver and verily believe that the jurisdiction of this court has been imposed upon by the collusion of the parties plaintiff and the other parties hereinbefore mentioned as members of said organization of employers; and humbly pray this court to make the necessary inquiry into the verity of the matters herein alleged either by having the proper issue joined and tried, or by some other appropriate form of proceeding and "act as justice may require for its own protection against fraud or imposition" (Hartog vs. Memory, 116 U. S. 588).

For a fourth and separate defense:

29. On information and belief allege that another motion is pending in the New York Supreme Court, New York County (the title whereof is set forth at length in paragraph 23 hereof) wherein the parties plaintiff herein are plaintiffs along with ten other employers in the steel and iron industry in Greater New York and vicinity, all of whom are members with the plaintiffs herein of the Iron League of New York, and as such members co-operating with plaintiffs herein in litigating the matters in controversy in said action. That the defendants in said action are virtually (and, indeed, almost literally) identical with the defendants herein—in both cases said defendants being the International Association and its local unions, together [fol. 55] with sundry business agents and representatives of said organizations.

30. On information and belief that, in essence, the issues involved in said Post & McCord action are the same as in the instant case; that both actions grow out of the same controversy among the same parties, over disputes connected with operations in the same industry in the same city and the same territory; involving on the part of plaintiffs in both actions, the same ultimate purpose, namely; to disrupt and destroy defendants' labor union organization and thus enable plaintiffs to substitute open shop, non-union labor

for the existing union labor conditions; and the same injunctive restraint upon the same parties defendant, their officers and members—the only variation, in fact, being that to the demands for injunction against strikes, threats, violations, intimidations and coercion embodied in both complaints, plaintiffs have thrown in as a make-weight, allegations of boycott and prayers for injunctive relief thereupon, but defendants aver that upon any fair analysis of the complaints and answers in said actions, it will readily apppear that said boycott allegations are gratuitously imported into the complaint herein and are merely a subterfuge whereby plaintiffs seek to impose upon this court through the securing of action favorable to them, well knowing that had they submitted the allegations of the complaint herein to the New York Supreme Court in the action therein pending, wherein they are plaintiffs and wherein all the allegations herein are properly cognizable and can readily be brought in by motion, amended complaint or otherwise, they would certainly have failed to secure the relief herein demanded, as in said New York Supreme Court action the plaintiffs (including plaintiffs [fol. 56] herein) were twice refused the temporary restraining order therein sought and upon a full hearing upon voluminous affidavits and briefs on both sides were refused the injunction pendente lite therein sought, the Court in its opinion saying:

Opinion of Hon. Richard P. Lydon, Justice of the Supreme Court of the State of New York, Rendered July 24, 1924

"Post & McCord, Inc., et al., v. Morrin, etc., et al.—The plaintiffs in this action make an application for an injunction pendente lite. The plaintiffs herein with a number of other corporations, are members of the Iron League, and their business is that of erecting structural steel. The defendants are certain labor union organizations. The plaintiffs claim that their business is being interfered with by the members of the defendants' unions and that there is a conspiracy on hand to injure and destroy the plaintiffs' trade and business and to compel the plaintiffs to enter into closed union shop agreements for the purpose of compelling the employment of none but union men in the industry of erecting iron and steel in the metropolitan district. The

plaintiffs further claim that crowds of men who are members of the defendants' unions gather about the plaintiffs' respective jobs, notwithstanding the fact that the jobs are all picketed by the defendants' unions, and that these crowds threaten the workmen on plaintiffs' jobs with violence if they continue to work for the plaintiffs. Furthermore, that similar crowds have gathered about the hotel where some of the plaintiffs' employees were lodged and that they hoot and shout at the men and threaten them with personal violence if they continue to work for the plaintiffs. [fol. 57] That the defendants further interfered with the transportation of the men from the hotel to the work by holding up the taxicabs and other conveyances and so threatened the chauffeurs that they refused to carry the men to the jobs. There are also three or four cases of alleged personal assault or violence, but the evidence submitted to sustain the proof of such personal violence is not only very weak but is substantiallly disposed of by the opposing affidavits of defendants. The defendants make a counterclaim against the plaintiffs and allege that these plaintiffs have organized themselves into the Iron League, and that their only purpose of organization is to destroy the defendants' union, as the said Iron League will not enter into agreements with the unions by which it would be obliged to employ only union labor. The defendants further point out that the said Iron League is in cooperation with the great steel mills and that by reason of the refusal of the Iron League to contract to employ union labor the said steel mills grant them a rebate of $6.00 a ton on the purchase of steel to be erected within the metropolitan district. It is further claimed that the said Iron League maintains a large force of detectives, who act as spies upon the defendants' unions, who under the guise of interested workmen enter the defendants' unions to foment trouble and discord; that these spies seek to incite violence and unlawful acts on the part of the members of these unions. It is also alleged by the defendants, and it is undisputed, that every other branch of the building trade has signed contracts with the unions and that the plaintiffs have entered into contracts with every other union in relation to building operators, the sole exception being the defendants' unions and relating exclusively to the erection of structural steel, [fol. 58] and the defendants claim that this disproves the

plaintiffs' assertion that they are merely advocating the open shop, while the demand of the defendants is for the same conditions as those now enjoyed by their fellow workmen in other trades. There is no evidence of any probative force in the moving affidavits to show that the pickets on the different jobs were guilty of any violence or in any way substantially interfered with the plaintiffs' business. The principal complaint of the plaintiffs is as against the congregating of a number of the union men at different places who intimidate plaintiffs' employees and interfere with the plaintiffs' work. In many instances the members of the defendants' unions had heretofore worked on the plaintiffs' several jobs, but some weeks ago those union men were called off the job, and the defendants claim that a strike exists, which is denied by the plaintiffs. The numerous affidavits submitted by the plaintiffs alleging this congregation of men acting in a way to intimidate plaintiffs' employees, as well as tending to cause a breach of the peace, are met by numerous affidavits of the defendants, made by persons who were at the several respective places where these crowds of union men are alleged to have congregated, and these affidavits state that no such thing occurred as is alleged in the moving affidavits and that no disturbance was created. To sum up the claims of the parties, the plaintiffs contend that if they do not get this injunction pendente lite their business is liable to come to a standstill, as they will be unable to employ labor; on the other hand, the defendants claim that the plaintiffs through this injunction are seeking to tie the hands of the defendants' unions with the view of absolutely destroying them and they further claim that they have a perfect right to [fol. 59] picket these jobs and to peaceably persuade any workman in the employ of the plaintiffs to join their union. On the argument it was frankly admitted by defendants' counsel that for months these two opposing agencies, to wit, the Iron League on one side and the unions on the other, have been bitterly fighting each other and have been trying through a system of espionage to get all the information possible which might be detrimental to the other and that this was a fight to the death. Picketing is lawful when lawfully conducted. I do not find any charge in the affidavits which would support a finding that the pickets exceeded their rights as such. The members of the defendants'

unions have a perfect right to refuse to work with non-union men, and non-union men, on the other hand, have the right to work when and where they please. It is true that it has been held by the Courts in certain cases where violence has been shown to have occurred that even when the moving affidavits upon an application for an injunction are substantially denied by a defendant that nevertheless the Court will grant an injunction pendente lite, but in this case the few instances of alleged violence have not been substantiated by proof of sufficient probative force. The affidavits are so conflicting in this case that I hesitate to dispose of the matter summarily upon such a state of facts, because it was practically admitted upon the argument that the granting of an injunction pendente lite would be tantamount to a determination in advance of the trial of the issues herein involved. Having this in mind, coupled with the fact that the courts will be in recess for about two months more before the trial parts resume, an effort was made by the Court to have the parties herein agree to an [fol. 60] immediate reference of the whole issue. The defendants were agreeable to this proposition, but the plaintiffs refused to consent in view of the condition of the pleadings. There are some vital issues in this case raised by the defendants, and it may be that the defendants' contention that the plaintiffs do not 'come into Court with clean hands' may be sustained upon the trial. As was said in the case of Fay v. Lambourne (124 A. D. 245): 'Equity does not adjust the differences between rogues. The complainant is first judged, and not until he has been found free from taint does equity proceed to determine whether or not he has been wronged.' The question as to whether or not the plaintiffs are, as alleged by the defendants, engaged in a conspiracy to destroy the defendants is clearly raised by the papers on this motion, and if established would be decisive of the fact that the plaintiffs are not entitled to come into equity for relief.

The papers before me create a doubt in my mind as to the rights of the respective parties—first as to whether the defendants are overstepping the powers which the law gives to them, and, secondly, whether the plaintiffs are in such a situation that they are entitled to equitable relief. Where such a doubt exists the arm of the Court will not be stretched out to aid the plaintiffs and to give to them dur-

ing the pendency of this action all of the relief which they sought and may obtain by a final judgment. Motion is denied with $10 costs."

Defendants respectfully ask special attention to that portion of Mr. Justice Lydon's opinion wherein he says:

"To sum up the claims of the parties, the plaintiffs contend that *if they do not get this injunction pendente lite* [fol. 61] *their business is liable to come to a standstill* as they will be unable to employ labor."

and to the obvious inconsistency between the gloomy predictions thus made under oath by all the plaintiffs in the Post & McCord action (including the plaintiffs in the instant action) as far back as June, 1924 and the allegations of the complaint in the instant action showing that the four plaintiffs herein (by no means the largest of the Iron League members) are now engaged upon the execution of contracts in the City of New York, aggregating Eight Million ($8,000,000) dollars (see comp. pars.) although the injunction pendente lite which they swore they must have to save their business from ruin was definitely denied them by the New York Supreme Court.

For a fifth and separate defense:

31. On information and belief allege that the matter in controversy herein does not exceed, exclusive of interest and costs, the sum of value of Three thousand ($3,000.00) dollars. That the possible ultimate facts as to the character and extent of the damages to plaintiffs from the acts of defendants alleged herein nowhere appears in the complaint in the action and that plaintiffs have failed or refused to allege in their demand for relief or elsewhere in said complaint the amount of money damages sought by them or, indeed, to demand any money damages whatever, and that the formal allegation of the sum or value thereof contained in paragraph 6 of the complaint is alleged therein only for the improper purpose of invoking the jurisdiction [fol. 62] of the United States District Court in the hope of securing thereby injunctive relief already denied to plaintiffs in the action already pending between plaintiffs and other employers, as plaintiffs, and virtually the same defendants in the New York Supreme Court.

For a sixth and separate defense:

32. On information and belief that the loss and damage to the property of plaintiffs from the acts of defendants alleged in the complaint in this action will not be irreparable as alleged in paragraph 21 of said complaint, as it nowhere appears in said complaint that the injuries therein complained of are "of such constant and frequent recurrence that no fair or reasonable redress can be had therefor in a Court of Law," and that, on the contrary, the only instances of alleged injury (which are hereby denied) are isolated and not of such character as properly to warrant the injunctive relief, which, alone, is demanded in the complaint—no money damages being demanded.

For a seventh, separate and distinct defense and by way of objection to the jurisdiction of this Court:

33. Defendant, Arthur Bolton, denies, and on information and belief, all the other defendants deny that this is an action "between citizens of different states" as provided by Judiciary Code, Section 24, in that whereas three of the plaintiffs are alleged in the complaint herein to be corporations organized and existing under the laws of the State of New Jersey, and all the defendants to be citizens, inhabi-[fol. 63] tants and residents of the State of New York, said defendant Arthur Bolton is and ever since this action was instituted has been a citizen, inhabitant and resident of the State of New Jersey.

For a separate and distinct defense and by way of counterclaim as part of and arising out of the transactions set forth in the complaint and out of which the plaintiffs' alleged cause of action is alleged to arise, defendants allege as follows:

(34) On information and belief, the National Steel Fabricators' Association, the Bridge Builders' and Structural Society, the Structural Steel Society and the American Erectors' Association are national associations whose members are manufacturers, fabricators and erectors of structural steel and iron throughout the United States.

(35) On information and belief the National Erectors' Association, an organization of corporations, firms and individuals engaged in the manufacture, fabrication and erec-

tion of steel and iron throughout the United States, has its office in the City of New York, and has district offices in Pittsburgh, Cleveland, Kansas City, Milwaukee and Philadelphia; the membership of the said Association includes the American Bridge Company which is a subsidiary of the United States Steel Corporation, owned and directed by the latter, and includes other large steel companies directly and through their subsidiaries controlling a practical monopoly of the structural steel manufactured in the United States.

[fol. 64] (36) On information and belief the United States Steel Corporation is a great steel corporation with assets of considerably over one billion dollars, transacting directly and through its subsidiaries, about 45% of the business in the City of New York and steel mills throughout the United States. It is by far the largest and most important of all factors in the steel business in the United States. Its said subsidiary American Bridge Company is by far the most important, in the United States, of the manufacturers of structural steel used in the construction of buildings. The next largest is the Bethlehem Steel Corporation.

(37) On information and belief, organizations associated with the above national associations were formed in New York City and other large centres of population. The local organization in New York City was known until July, 1920, at which time it dissolved in the manner and for the purposes hereinafter set forth, as the Iron League Erectors' Association, of which all the plaintiffs herein were members. The said Iron League Erectors' Association was transformed in July, 1920, into the Iron League of New York, of which the plaintiffs are members.

(38) On information and belief, the affairs of the National Erectors' Association, and of the Iron League are directed for and on behalf of such associations in the main by one Walter Drew, sometimes known as Attorney, and sometimes as Commissioner for both of the last named organizations and the members thereof including the plaintiffs.

(39) On information and belief, the plaintiffs, commencing about the year 1906 and continuing down to the present [fol. 65] date have continuously conspired and combined with each other and with the said National Steel Fabrica-

tors' Association, Bridge Builders and Structural Society, Structural Steel Society, American Erectors' Association, Iron League of New York and with the respective members of such associations, the United States Steel Corporation, the Bethlehem Steel Corporation, and other manufacturers of steel in various sections of the United States, together constituting over 80% in value and amount of the entire output of structural steel, to destroy the defendant International Association of Bridge, Structural and Ornamental Iron Workers, (which for the purpose of brevity, will be hereafter referred to as the Iron Workers' Union), and to destroy the associated local organizations of workmen engaged in the erection of structural steel and iron in the City of New York and elsewhere, and to destroy the business of the firms and corporations which did and now do employ members of the Iron Workers' Union and other organizations of union labor, under agreements recognizing such unions and to prevent the unionization of the manufacture fabrication and erection of steel and iron throughout the United States in the manner and by the unlawful means herein set forth.

(40) On information and belief, to carry out the purposes of the said combination and conspiracy and in order to effect the objects thereof, the plaintiffs directed their efforts along two main channels, (a) the destruction or impairment by unfair competition of the business of corporations, firms or persons employing members of the Iron Workers' Union under agreements recognizing said union, [fol. 66] and, (b) the destruction of the Iron Workers' Union itself.

(41) On information and belief, to carry out the purposes of the said combination and conspiracy and in order to effect the objects thereof, the plaintiffs, as members of the Iron League Erectors' Association, became, in about the year 1906, members of an organization known as the Building Trades Employers' Association and continued to be members of such an association until June, 1920.

(42) On information and belief, the Building Trades Employers' Association was, and is, composed of members of constituent associations of employers in the various industries connected with the building trades in the City of New York and vicinity and includes also individual and firm

members; that on information and belief, the total invested capital represented by its membership runs into millions of dollars; that, on information and belief, this organization is managed by a Board of Governors, and has a Constitution and By-Laws that are enforced by its members under compulsion of fines and penalties.

(43) That, on information and belief, members of the Building Trade Employers' Association, with the exception of the Iron League Erectors' Association, and the plaintiffs herein, employed union labor; that upwards of sixty labor unions connected in one way or another with the building trades, with a total membership of upwards of 115,000 men, constituted an organization known as the Building Trades Council, which, during all or a substantial part of the time [fol. 67] that the plaintiffs were members of the Building Trades Employers' Association, operated in conjunction with the said Building Trades Employers' Association; that, on information and belief, the said Building Trades Council was so organized that by the express terms of its constitution the appointment of all the officers and members of the Executive Committee was lodged in its President, Robert P. Brindell.

(44) That on information and belief, by a scheme of operation between the Board of Governors of the Building Trades Association and the said Robert P. Brindell as head of the Building Trades Council, the building industry of the City of New York and the awarding of contracts and subcontracts in that industry were controlled and manipulated so as to prevent non-members of the Building Trades Employers' Association from obtaining contracts and so as to promote price fixing and other illegal practices on the part of the employers and extortion on the part of Brindell by arrangement between them and that such price fixing and other illegal practices were carried out by said employers and extortion was practiced by said Brindell.

(45) That, on information and belief, the members of the Iron League Erectors' Association, and the present plaintiffs, participated in these pernicious activities by their membership in the Building Trades Employers' Association, and that they utilized the situation so created as a means by which to carry out the purposes of the said combination and conspiracy and to effect the objects thereof.

(46) That, on information and belief, to carry out the purposes of the said combination and conspiracy and in [fol. 68] order to effect the objects thereof through the use of the Building Trades Employers' Association, the Plaintiffs also compelled the members of the Building Trades Employers' Association to award their contracts for the erection of steel and iron to the members of the Iron League Erectors' Association and the present plaintiffs who did not recognize the Iron Workers' Union. By this means independent steel erectors who recognized the Iron Workers Union were prevented from obtaining contracts. On the other hand, if they did obtain contracts they could be, and on information and belief, were harrassed by the activities of Robert P. Brindell. In this way, by a skillful use of the Building Trades Employers' Association and its offending members, the Iron League Erectors' Association was able to control and manipulate the awarding of contracts in their industry, thereby destroying the businesses of independent erectors who chose to recognize the Iron Workers Union.

(47) On or about December 17, 1919, the Building Trades Employers' Association, by an agreement with the Building Trades Council recognized Local No. 40 of the Iron Workers' Union.

(48) On information and belief the members of the Iron League Erectors' Association and the present plaintiffs were bound by such agreement.

(49) On information and belief, to carry out the purposes of the said cambination and conspiracy and in order to effect the objects thereof, the present plaintiffs and the members of the Iron League Erectors' Association resigned from the Iron League Erectors' Association in order to terminate their membership in the Building Trades Employers' Association and thereby repudiated the agreement. [fol. 69] Almost immediately thereafter, the Iron League of New York was formed and the present plaintiffs became members in the substitution for the Iron League Erectors' Association and in order to carry out the aims and objects of the conspiracy to destroy the Iron Workers' Union independently of the Building Trades Employers' Association, now that the latter could no longer be used to further

the aims and objects of that conspiracy in that it had recognized and contracted with the Iron Workers' Union.

(50) On information and belief, to carry out the purposes of the said combination and conspiracy and in order to effect the objects thereof and to destroy the enterprises of independent erecting contractors who recognized the Iron Workers' Union, the members of the combination and conspiracy, including the present plaintiffs, refused to sell steel and iron to such independent contractors if the steel was to be erected under union conditions and by union labor.

(51) On information and belief, to carry out the purposes of the said combination and conspiracy and in order to effect the objects thereof and to destroy the enerprises of independent erecting contractors who recognized the Iron Workers' Union, the members of the combination and conspiracy including the present plaintiffs refused to sell steel and iron f. o. b. New York City to such independent erecting contractors and insisted on selling it erected in place by non-union labor which they themselves supplied.

(52) On information and belief, to carry out the purposes of the said combination and conspiracy and in order to [fol. 70] effect the objects thereof the members of said combination and conspiracy, including the plaintiffs, submitted and submit and insisted upon and insist upon prices for steel and iron f. o. b. in New York City to independent erecting contractors engaged in erecting buildings in the City of New York, who recognized the Iron Workers' Union which were and are grossly excessive and created and create differentials against such independent erecting contractor and in favor of the plaintiffs and other members of the combination and conspiracy with the result that an independent contractor who recognized the Iron Workers' Union had to and has to pay vastly more for steel and iron f. o. b. in New York City than a contractor who refused and refuses to recognize the said union and thereby hampered the construction of buildings in the City of New York and rendered it impossible for independent contractors who recognized the Iron Workers' Union to compete with the plaintiffs and thus secured for the plaintiffs an unlawful advan-

tage over the independent contractors who employed members of the Iron Workers' Union.

(53) That, on information and belief, to carry out the purposes of the said combination and conspiracy and in order to effect the objects thereof, the members of the said combination and conspiracy, when they did take orders from independent contractors recognizing the Iron Workers' Union, controlled the deliveries to those contractors as to time, and so used such control as to delay shipments that were required and otherwise hampered such independent contractors in their building operations with the intent to prevent and discourage their recognition of the Iron Workers' Union, so that a great length of time was allowed to elapse before the delivery was made and the [fol. 71] order fulfilled, causing great financial loss and inconvenience to the independent contractors and to the Iron Workers' Union and its members who were thereby deprived of employment.

(54) That on information and belief, these practices of refusing to sell steel and iron to independent contractors who recognized the union and of refusing to sell steel and iron f. o. b. New York City to independent contractors who recognized the union and refusing to sell steel and iron f. o. b. except at a price discriminatory against the independent contractors and of controlling deliveries of steel and iron to independent contractors so as to delay the progress of their work, actually did destroy the erecting contracting business of such firms as Thompson Starrett Company, the George A. Fuller Company and other independent erecting contractors in the City of New York who recognized and employed the members of the Iron Workers' Union with the result that many sources of employment were closed to the members of the Iron Workers' Union thereby.

(55) That, on information and belief, the combination and conspiracy was particularly effective against firms and corporations employing union labor, for the reason that those firms, through the operation of the conspiracy, could not and cannot freely secure steel for erection purposes unless they agree to operate with non-union labor in the erection of steel and iron; if they did so agree they could

not and cannot secure competent workmen as all available competent non-union men have been absorbed by the members of the combination and conspiracy.

(56) That on information and belief, to carry out the purposes of the said combination and conspiracy and in [fol. 72] order to effect the objects thereof, statements of policy against unionism and the affirmation of the principle of maintaining the non-union shop throughout the steel industry, have been repeatedly made in meetings of the National Erectors' Association, in meetings of the Iron League Erectors' Association, in conference with officers and officials of the large steel companies, in letters and correspondence among and between officials of these companies and members of the various associations comprising the conspiracy, and in pronouncements written and oral to independent contractors in the business of erecting steel; that the main purposes and intent of these statements, communications, announcements, et cetera, were to create propaganda in favor of the non-union policy and to cause the destruction of the Iron Workers' Union.

(57) That to carry out the purposes of the said combination and conspiracy and in order to effect the objects thereof, statements of policy against unionism and the affirmation of the principle of maintaining the non-union shop throughout the steel industry have been repeatedly made to iron workers and their helpers, whether members of the Iron Workers Union or not, in literature which was placed in their pay envelopes. This literature contained untrue, improper and inflammable statements intended and directed to destroy and which did destroy the power and influence of the Iron Workers' Union.

(58) That, on information and belief, to carry out the purposes of the said combination and conspiracy and in order to effect the objects thereof, the Iron League Erectors' Association passed a resolution to the effect that all of its members should employ a substantial percentage [fol. 73] of non-union members on all new erection work after December, 1919, which resolution was carefully followed and resulted in the discharge of and refusal of employment to many members of the Iron Workers' Union.

(59) That, on information and belief, to carry out the purposes of the said combination and conspiracy and in order to effect the objects thereof, for many years past and continuing down to the present time, the National Erectors' Association, the Iron League Erectors' Association, the Iron League and the present plaintiffs employed and supported a large number of detectives, investigators and agents provocateur under the direction of one Robert Foster who maintained his headquarters at the office of the National Erectors' Association and who was and is subject to the orders of and worked and works in conjunction with the said Walter Drew on behalf of the National Erectors' Association, the Iron League Erectors' Association and the Iron League.

(60) That to carry out the purposes of the said combination and conspiracy and in order to effect the objects thereof, the National Erectors' Association, the Iron Erectors' Association, the Iron League and the present plaintiffs caused said Foster and his operatives to maintain and run a department known as a Labor Bureau. That this Labor Bureau, on information and belief, was used by the plaintiffs as and was an effective means of black-listing the members of the Iron Workers' Union, of preventing their employment and of securing their discharge. That on information and belief, this Labor Bureau was and is supported by contributions from the members of the National Erectors' Association, the Iron League Erectors' Associa-[fol. 74] tion, the Iron League, and the plaintiffs, based on assessments made on a tonnage basis.

(61) That, on information and belief, to carry out the purposes of the said combination and conspiracy and in order to effect the objects thereof, in times of industrial depression in the steel industry the said Foster and his operatives spent their time and energy in creating propaganda against the Iron Workers' Union, in dissuading workmen from joining it and persuading workmen to resign from it. That this large detective force constituted a spying system of paid propagandists which had and has for its avowed purpose, keeping the structural iron workers from organizing and destroying the vitality of any organization including the Iron Workers' Union which at-

tempts to secure for structural iron workers the benefit of union agreements. That these propagandists and spies became members of the Iron Workers' Union and frequently worked their way up to and occupied high positions of trust therein.

(62) That, on information and belief, to carry out the purposes of the said combination and conspiracy and in order to effect the objects thereof, in times of industrial strife and strikes it was and is the purpose of the said Foster and his operatives and paid propagandists to, and they did and do, act as spies at the meetings of the Iron Workers' Union and generally during the course of their activities; it was and is their purpose to, and they did and do, create unfavorable propaganda against the Iron Workers' Union; it was and is their purpose to, and they did and do, transport strike-breakers from one part of the country to another; it was and is their purpose to, and they did and [fol. 75] do, recruit strike-breakers, and it was and is their purpose to create dis-harmony and dissension which are intended to lead to acts of violence; it was and is their purpose to and they did and do, as spies and alleged members of the Iron Workers' Union, commit such acts of violence, and then attempt to lay these acts of violence at the door of the Iron Workers' Union in accordance with the immemorial custom of agents provocateur.

(63) That, on information and belief, many members of the Iron Workers' Union have been discharged and many members have been refused employment time and again as a result of the combination and conspiracy of this propaganda against unionism and of the work of Foster and his operatives pursuant to the combination and conspiracy, as aforesaid.

(64) That, on information and belief, many iron workers and their helpers have been prevented and dissuaded from joining the Iron Workers' Union and many members thereof have resigned therefrom by reason, and as a result, of this propaganda against unionism and the work of Foster and his operatives, pursuant to the combination and conspiracy, as aforesaid.

(65) That said combination and conspiracy constitute a monopoly as regards the erection of steel buildings, and is

thus and otherwise violative of the law in that it constitutes a restraint of interstate trade and commerce.

(66) That, on information and belief, the said combination and conspiracy also violate the Federal Trade Commission Act, in that unfair methods are employed in an [fol. 76] attempt to secure a monopoly to the members of the combination of the building industry in the City of New York and elsewhere.

(67) That, by reason of the activities of the said combination and conspiracy there have been arbitrary and illegal interferences with the legitimate organization activities of the Iron Workers' Union, industrial strife has been greatly promoted to the detriment and damage of the Iron Workers' Union, the number of corporations, firms, and individuals engaged in the building industry in the City of New York and elsewhere who recognize the Iron Workers' Union has been and is artificially and arbitrarily limited and long, unnecessary and arbitrary delays have been created in the erection of buildings in New York City and elsewhere, all to the detriment and damage of the Iron Workers' Union.

(68) That by reason of said combination and conspiracy and by reason of the illegal acts and practices of the plaintiffs as members of such combination and conspiracy, the defendants herein and the good will, activities, numerical strength and material resources of the Iron Workers' Union have been greatly injured to their damage and to the damage of the Iron Workers' Union, besides suffering other damages for which there is no remedy at law.

(69) This suit is of a civil nature in equity and the matter in controversy exceeds, exclusive of interest and costs, the sum of Three thousand ($3,000.00) Dollars.

Wherefore defendants pray judgment:

1. That the plaintiffs in this suit, Levering & Garrigues Company, Hay Foundry & Iron Works, Hedden Iron Con- [fol. 77] struction Company, McClintic-Marshall Company, and each and every of them and all persons associated with them and their agents, servants, attorneys, confederates, and any and all persons acting in aid of or working on combination with them, be enjoined and restrained as follows:

(a) From conspiring and combining to destroy the existence of the defendant Union, the International Association of Bridge, Structural and Ornamental Iron Workers;

(b) From discriminating in terms, prices, or discounts, charged for structural steel and iron, or for the erection thereof in place, against any person, firm or corporation by reason of the fact that the said person, firm or corporation employs a member or members of the defendant Union, or operates a closed Union shop principally by agreement with the said union;

(c) From discriminating in the time of delivering of structural steel or iron to purchasers of the same by reason of the fact that such purchasers employ a member or members of the defendant Union, or operate a closed shop principally by agreement with the said union.

(d) From refusing to sell structural steel and iron to any person, firm or corporation by reason of the fact that such person, firm or corporation employs a member or members of the defendant Union, or operates a closed shop principally by agreement with the said union;

(e) From boycotting or attempting to boycott, or inducing others to boycott any person, firm or corporation by reason of the fact that such person, firm or corporation *by reason of the fact that such person, firm or corporation* [fol. 78] employs a member or members of the defendant Union, or operates a closed shop principally by agreement with said Union;

(f) From in any wise coercing or inducing any firm, person or corporation to refuse to employ members of the defendant Union, from doing any act or thing whatsoever to restrict defendants or members of the defendant Union from the free and unhindered control and conduct of the defendants' business and of the Iron Workers' Union, and from causing any firm, person or corporation willing to employ members of the said Union to refrain from doing so by propaganda, communications, statements or conduct;

(g) From interfering with, hindering or obstructing the defendants' business and the operation of the defendant Union in any manner by inducing, compelling or attempting to induce or compel by threats or otherwise, any person,

firm or corporation employing any member of the defendant Union, to discharge the said member or said members, or to refuse or fail to perform their duties as such employers;

(h) From unlawfully inducing, persuading or causing or attempting to induce, persuade or cause the employers of any member or members of the defendant Union to break their contracts of employment with such member or members.

(i) From doing any act or thing whatsoever to cause dissension and foment disturbance and trouble in the ranks of the defendant Union by the use of propaganda, threats, communication, language, conduct or otherwise;

(j) From unlawfully inducing, persuading, or causing, or attempting to induce, persuade or cause any member or [fol. 79] members of the defendant Union to resign from said Union by use of propaganda, threats, communication, language, conduct or otherwise;

(k) From unlawfully inducing, persuading or causing or attempting to induce, persuade or cause any person eligible to become a member of defendant Union, from joining such Union;

(l) From advising with, encouraging, persuading or consulting with employers of a member or members of the defendant Union, with the design of procuring agreements on the part of such employer by which he or it agrees to employ only non-union labor, or by which he agrees not to employ members of the defendant Union.

2. That the said combination and conspiracy on the part of the plaintiffs, and all activities in pursuance thereof shall be declared to be illegal.

3. That the defendants have $10,000,000.00 damages.

4. That the defendants may have such order, judgment or decree or other relief in the premises as to the Court may seem proper.

Frank P. Walsh, Attorney for Defendants. Office & Post Office address: 55 Liberty Street, Borough of Manhattan, City of New York.

[fol. 80] IN UNITED STATES DISTRICT COURT

[Title omitted]

REPLY TO COUNTERCLAIM

Reply to counterclaim of all defendants except Arthur Bolton, the said Arthur Bolton not being a defendant in this cause.

1. Deny the statements contained in paragraph 34 except the allegations relating to the American Erectors' Association as to which plaintiffs deny any knowledge or information thereof sufficient to form a belief.

2. Deny each and every allegation contained in that part of paragraph 35 reading as follows: "the membership of the said Association includes the American Bridge Company which is a subsidiary of the United States Steel Corporation, owned and directed by the latter and includes other large steel companies directly and through their subsidiaries controlling a practical monopoly of the structural steel manufactured in the United States," except that plain-[fol. 81] tiffs admit that the American Bridge Company is a member of the National Erectors' Association.

3. Deny each and every allegation contained in said counterclaim in each of the paragraphs numbered 38, 39, 40, 41, 45, 46, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68 and 69.

4. Deny any knowledge or information thereof sufficient to form a belief, as to each of the allegations contained in paragraphs 36, 43 and 44.

5. Deny the allegations in the first sentence of paragraph 37 as to plaintiffs and deny any knowledge or information thereof sufficient to form a belief in so far as the allegations in said first sentence refer to other alleged national associations; and plaintiffs deny each and every allegation contained in the second sentence of paragraph 37, except that the Iron League Erectors' Association was dissolved in 1920 and that the Iron League was organized in 1920.

6. Deny the allegations in paragraph 53 as to the plaintiffs and deny any knowledge or information thereof suf-

ficient to form a belief in so far as the allegations in said paragraph refer to other persons.

And for a first separate and distinct defense to the alleged cause of action set forth in the counterclaim in said amended answer, plaintiffs allege:

7. Plaintiffs repeat each and every of the allegations contained in the bill of complaint and say that by reason of the [fol. 82] facts therein alleged the said defendants are barred from prosecuting or seeking any relief by reason of the matters and things set forth in the counterclaim.

And for a second separate and distinct defense set forth in the counterclaim plaintiffs allege:

8. Defendants have made no timely and diligent effort by any action or proceeding based upon the alleged acts and transactions set forth in the counterclaim; and defendants have been guilty of such lack of diligence and are now guilty of such laches in the premises that they may not now question or complain of the aforesaid acts and transactions alleged in said counterclaim and consequently defendants are not at this late day entitled to any assistance or relief from a court of equity.

Defense in Matter of Law

9. Plaintiffs say, and they pray the same benefit of this defense as if it had been made by way of plea or motion to strike out the bill, that the matters and things set forth in the said counterclaim are not sufficient to constitute a cause of action cognizable in equity; that the matters and things set forth in the said counterclaim are not matters and things growing out of the transaction mentioned in the bill of complaint and are not germane to the bill of complaint or to the relief therein prayed and have no regard to the subject matter of the bill of complaint and are not the proper subject matter of a counterclaim or cross bill; that this court lacks jurisdiction; that there is no interest disclosed by the coun- [fol. 83] terclaim in the defendants to obtain the relief prayed for in the counterclaim; that this court is without jurisdiction to grant the relief prayed for in the counterclaim and specifically with respect to the claim for damages that this court has no jurisdiction in this suit to award damages at the suit of the defendants and that to so do

would be to deprive the plaintiffs of the rights secured to them by the Constitution of the United States, to a trial by jury, the claim for damages being purely an action at law.

Edward Maxson, Attorney for Plaintiffs. Office and P. O. address: 165 Broadway, Borough of Manhattan, City of New York.

[fol. 84] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OF REFERENCE—NOV. 13, 1925

[fols. 85-1965] On reading and filing the annexed Consent of the attorneys for the plaintiffs and defendants above named, it is hereby

Ordered, that this cause and all the issues therein are hereby referred to Wm. M. Cannon, Esq., of as Referee, to hear and determine; and it is further

Ordered, that in order to preserve the status quo of the parties and without prejudice to either party, the temporary restraining order heretofore granted herein, ex parte, be and is hereby continued until the further order of this Court.

Wm. Bondy, U. S. D. J.

The entry of the above order is hereby consented to.

Edward Maxson, Attorney for Plaintiffs. Nathaniel Cohen, Attorney for Defendants Edward Coleman, Indiv. and as Pres., etc., International Assn., etc., John Snyder, and Henry G. Wolf. Frank P. Walsh, Attorney for Defendants.

[fol. 1966] IN UNITED STATES DISTRICT COURT

[Title omitted]

REPORT AND DECISION OF REFEREE

Pursuant to an order made on November 23, 1925, on stipulation of all the parties, appointing me referee to hear and determine all the issues herein, this cause came on regularly for trial on the 4th day of January, 1926, Edward

Maxson, Esq. and Merritt Jane, Esq. appearing as counsel for plaintiffs, Nathaniel Cohen, Esq. appearing for the defendants, Henry Wolf, Edward Coleman and Local No. 52 of the International Association of Bridge, Structural and Ornamental Iron Workers, and Frank P. Walsh, Esq., Edward K. Sumerwell, Esq. and Harold Stern, Esq. appearing for all of the other defendants.

Hearings were had from time to time until May, 1929, in which over 1,900 pages of testimony were taken and over 170 exhibits admitted. After the evidence was concluded, briefs covering more than 900 printed pages were filed, and the cause was later orally argued and finally submitted for decision on May 23, 1929.

[fol. 1967] The action was brought to obtain a permanent injunction against defendants restraining and enjoining them from combining and conspiring for the purpose of injuring or destroying plaintiffs' business, and from continuing a course of action which, it is alleged is causing and will continue to cause plaintiffs irreparable injury. Relief is asked both under the common law and the Sherman Act as amended by the Clayton Act, October 15, 1914 (38 Stat. at L. 730, 737, Chap. 323).

The four plaintiffs are foreign corporations engaged in the fabrication of structural iron and steel in states other than New York and in the erection thereof in the Metropolitan District of New York, a territory comprising the area within a radius of twenty-five miles from the City Hall in New York City. Plaintiffs are also engaged in the erection of iron and steel in other states. They are members of an association called the "Iron League," composed of at least fourteen corporations engaged in the same character of work. Plaintiffs' work is ordinarily done under subcontracts for the erection of iron and steel obtained from general contractors having contracts for the construction of entire buildings or other structures. In some instances plaintiffs' sub-contracts include fabrication as well as erection. The volume of business done by plaintiffs in the metropolitan district is very large, their contracts for the year 1925, when this suit was brought, amounting to many millions of dollars.

The defendants are Paul J. Morrin, individually and as president of the International Association of Bridge, Structural and Ornamental Iron Workers, herein called the "In-

ternational," and its Local Unions numbered 40, 361, 52, 197 and 170. The individual defendants are officers, busi-
[fol. 1968] ness agents and other representatives of the local unions. The action has been dismissed as to the defendants Arthur Bolton, David Baxter, Patrick Farrell, Charles MacDonald and District Council of New York and Vicinity.

The International is a voluntary labor organization, consisting of local unions and the members thereof, including bridge, structural, ornamental and reinforced concrete iron workers, shop men, riggers, machinery movers, stone, derrick men and pile drivers (Constitution, Def. Exhibit A, Art. I, II).

Its objects, as set forth in its constitution, are, among other things, to secure by legal and proper means pay commensurate with the hazard, physical and mental taxation, exhaustion and average life endured by its members in performing services of the trade, and to promote sale and reasonable methods of work (Constitution, Def. Ex. A, Art. III).

It claims for its members jurisdiction over all branches, trades and crafts of the building industry, in shop and outside, throughout the United States and Canada, comprising the fabrication, erection and construction of all iron and steel, ornamental lead, bronze, brass, copper and aluminum, reinforced concrete structures and a large number of other classes of metal work connected with the building industry, including the operation of derricks and cranes on all forms of construction work, the moving, hoisting and lowering of machinery, and practically all other work incidental to the actual construction of buildings and other structures (Constitution, Def. Ex. A, Art. IV).

It functions through a general executive board consisting of the general president, the general secretary-treasurer [fol. 1969] and one out of nine general vice-presidents. This board, among other things, is authorized to enter into all agreements which in its judgment may be to the best interest of the membership. It has full supervision over all strikes and exercises authority over them. On all matters not otherwise specifically provided for this board has full power to act (Constitution, Def. Ex. A, Art. XII, Sec. 3).

The duties and powers of the general president are to exercise a general supervision over the affairs of the association, its officers and organizers, and to assign them to their respective duties; to appoint all officers and committees, organize or cause to be organized local unions, decide all points of law, and suspend any subordinate body for violation of the constitution and laws; to order subordinate bodies to disband under penalty of revocation of charter whenever in his judgment they are working against the best interests of the association; to take possession of and examine all books, papers and financial accounts of subordinate bodies; to suspend officers of the association or any of its chartered bodies for being derelict in their duties or for failure to promptly comply with his instructions with the approval of the general executive board, to effect a settlement of any strike; and to assign to any of the general vice-presidents any particular duty to assist him regardless of their respective order or title (Constitution, Def. Ex. A, Art. IX).

The members of the International, consisting of local unions composed of practical workmen eligible for membership and operating under a charter granted by the association, have very limited powers. They are forbidden to [fol. 1970] call certain strikes or to cause the stoppage of any work without first securing the sanction and approval of the general president. Each local has a business agent who is the recognized representative of the union to the employers and general public (Constitution, Def. Ex. A, Art. XVIII, Secs. 1-22).

At the time of the commencement of this action the International had a membership of approximately 30,000 men. Its membership in the Metropolitan District of New York alone was about 8,000.

The defendant Morrin, who was the general president at all times involved herein, had in conjunction with the executive board, of which he was a member, practically complete power and authority over the local unions which, especially in matters connected with strikes, were entirely subject to his dictation and control; and he, in connection with the other members of the general executive board, all of whom were in harmony with his policies, was in position to exercise the full power and authority of the International.

At the time of the occurrences involved herein, the building industry in the Metropolitan District of New York was completely organized, excepting as to the plaintiffs and other members of the iron league (S. M., 334). Employers engaged on sub-contracts covering all other crafts in the industry had recognized the unions and were operating under union conditions, including the closed shop. The plaintiffs and other members of the iron league were operating on the open shop basis, the effect of this being that in the construction of large buildings members of unions operating closed shop and working on the same building at trades other than steel erection work, would have to work side [fol. 1971] by side with such non-union men as might be employed by members of the league. These concerns, although operating open shop, employed both union and non-union men. In other words, they were not operating on what is known as a non-union closed shop basis, but employed union as well as non-union men, without, however, recognizing the union or submitting to union conditions.

There has been almost continuous strife between the iron league and the International for over twenty years. Since 1905 the league has consistently and persistently operated on the open shop plan, employing both union and non-union labor. The International's uniform policy has been to cause the league to recognize the union and work under union conditions, including the closed shop. The result has been strikes and other labor troubles occurring from time to time during the intervening years, some of them accompanied by sympathetic strikes. The latest strike began on May 1, 1924.

In July, 1924, while this strike was in progress, the International and its executive officials evolved a new and unique plan to bring about the submission of the league. This was well conceived and put into effect with the vigor characteristic of the International's officials. What it was clearly appears from the circular letter issued by the International in July, 1924 (Exhibit P-26; S. M., 364), and excerpts from issues of The Bridgemen's Magazine, the official journal of the International, published in and after August, 1924. How the plan was prosecuted and effectuated is also shown by these excerpts and by the testimony of many witnesses.

[fol. 1972] In the Bridgemen's Magazine for September, 1924, appears the following:

"I arranged almost two months ago for the daily Dodge work reports to be sent to our New York International office for the information of our various local unions and their business agents and the International representatives who were assisting in the New York strike. These reports give detailed information from the time that any job is contemplated, giving the owner and architects of the proposed work, the nature of the building as well as the nature of its construction and the contemplated time of beginning such job. This information is of immense value and through the highly systemized efforts of the Dodge Company who get out these reports they are able to give very accurate, first class information just as any building work or job is contemplated. Our International representatives segregate these reports when they are received at our International office in New York and the information conveyed to our our various representatives and business agents. Letters are immediately sent out by our International office to the owners and architects, informing them of our present strike situation in the New York district and urging them to favorably consider having their steel erecting work done under union conditions and by union men, and pointing out to such owners and architects the advantage of following this course and requesting that they favor some union contractor or have the steel erected under fair conditions either through themselves, architect, owner, or the general contractor.

"When bids are being taken on such contemplated work the Dodge reports show this information and immediately our International representatives call on the various general contractors to whom this work has been awarded, urging that they also consider union firms for the erection of [fol. 1973] their steel and iron work. This is followed out by the International men in connection with the jobs of medium or large size and the same procedure is followed out by the International representatives who accompany the local business agents on the work of a smaller nature. This system entails a great deal of work through writing letters just as soon as the jobs come out and by having the same followed up by personal calls as outlined to the architect

and owner and by being later followed up by personal calls to the general contractor, but the results obtained by carrying out this plan have been very good. If we meet with the success which we anticipate in this direction it will not be many months before the members of The Iron League will feel to a considerable extent such influence and I feel that by following intelligent efforts of this kind that the fair contractors will be able to secure a large amount of this work. As the members of The Iron League firms fail to connect with these contracts, which I sincerely hope they will, I think that this will have a good influence upon them and it may possibly be the means of having them work in harmony with our organization."

In the Bridgemen's Magazine for October, 1924, the following appears:

"At present in the Metropolitan district of New York, which includes considerable territory surrounding that district, we have arranged for and received the daily Dodge reports which give full detailed information regarding all contemplated work starting from the owner and architect and daily reporting on such jobs until they reach the stage where work contracts are awarded. When these reports are received, letters are sent to the architect and owner by our International representatives and are followed up by [fol. 1974] personal calls, at which time every honorable effort is made to induce them to see that the steel erection is given to some contractor or erector who will erect the work with union men or erect the work themselves under union conditions. When the general contract is awarded the same procedure is followed out, both by letter and personal calls from our International representatives."

In the same issue there appears an address by defendant Morrin delivered at the 22nd convention of the International Association of Bridge, Structural and Ornamental Iron Workers, held in New York City on September 15, 1924, in which he said:

"We have had to follow lines to first establish in this district that the iron workers were an organization that could command and should command consideration by architects and contractors when letting their work. Understand in the past the attitude has been that the architects or own-

ers or contractors did not care what happened to the iron workers' union because they did not regard it of any consequence, and they did not care whether the iron workers were run into the middle of the Hudson River or not. With every other trade they were very careful of course to see that the work went to union contractors. * * * This necessitated meeting a great many contractors, employers, architects, owners and others interested.

"At the inception of the strike the Committee had assumed the position that under no consideration would they work on a sub-contract on an Iron League job. In the past that policy had been followed but in this strike we determined that we were going to squeeze the fellow that we had to squeeze because in the first place the fellow that needed to be woke up was the owner, the architect and the fellow who had the contract to let. Those were the lines we worked on for the first three months of the strike. We [fol. 1975] would not permit it, but there were any number of instances where contractors and owners and others tried to make all kinds of arrangements to get their work turned loose, but they were not successful. We had to go out and to establish to those owners that we were in a position to command consideration and we did. In other strikes men had been permitted to work on those jobs under sub-contracts, but we felt that this would be helping our enemies and so this time we sat tight.

"However, in the later months of the strike we changed our policy. We established with those owners, architects and contractors the fact that there was a real live fighting iron workers organization in this district. * * *

"Then we set about to get in daily touch with the architects and owners by checking up all new work contemplated in this district and immediately a personal letter was sent to each owner in each district calling upon them to consider the situation, and also personal calls were made by International representatives, at which time the situation was gone over. That was a big job. The building work here is enormous—there is more in this district than ever before. * * *

"I feel very confident that within a year's time we will be able to bring pressure to bear on these fellows to induce them to consider the letting of their contracts to fair contractors and when that is done our fight will be won here.

We are in the position of an army. We have taken a certain point and we have got to leave a garrison to continue the fight."

These quotations state the plan in detail. It was conceived some time in July and the first act done in carrying it out was the sending of a circular letter to owners, architects and builders. This was dated July 24, 1924 (Exhibits P-26 and P-32, pp. 364 and 434), and reads as follows:

[fol. 1976] "GENTLEMEN: We are writing to inform you that structural iron workers in the metropolitan district have been on strike since the first day of May, 1924, for an increase in wages and recognition of the local unions in the metropolitan district.

"Practically all of the firms doing steel erection work in the metropolitan district have granted the conditions asked for by the iron workers' union at the new union rate of wages of twelve ($12) dollars per day, with the exception of the members of The Iron League of New York, about fourteen in number, who insist on using non-union men on their steel erection work.

"Having a desire to cooperate with the owner, architect and contractor in every way possible in order to minimize delays in the progress of the building industry, thereby preventing useless financial losses, we are writing you this letter giving you the above information with the hope that you will cooperate with us by awarding your steel erection work to a firm that employs members of the International Association of Bridge, Structural and Ornamental Iron Workers.

"The members of the Bridge, Structural and Ornamental Iron Workers' union work for any employer who conducts his erection work under union conditions and pays union wages, whether he be owner, architect, general contractor, sub-contractor, builder or steel erector. Further information will be gladly given at this office to any one desiring same, trusting you will give this matter due consideration, we remain,

"Very truly yours, International Association of Bridge, Structural and Ornamental Iron Workers. W. J. McCain, Vice-President. D. J. O'Shea, Vice-President."

[fol. 1977] Similar circulars were sent out from time to time, as the Dodge reports showed that new contracts were to be let, and these were followed up by personal calls of the representatives of the International on owners, architects and general contractors to induce them to let their sub-contracts to "fair" contractors, that is, to contractors operating under union conditions.

On or about November 13, 1924, one of these circulars was sent to a general contractor and with it a letter from W. J. McCain, Vice-President, enclosing a list containing the names of eleven firms. This list bore the heading: "Pending the printing of a larger list of firms who use union structural iron workers on their steel erection work, the following firms are submitted to you." At the bottom of this list appears the following note:

"Any further information regarding firms using union iron workers can be had by calling Room 718, Aberdeen Hotel, Phone Penn 1600."

The letter from McCain is on the letterhead of the International and reads:

"November 13, 1924.

"GENTLEMEN: I have been informed that you are bidding on Public School 72 at N. S. Dewey Avenue, between Logan and Edison Avenues. I am writing to inform you that the structural iron workers in the metropolitan district have been on strike since the 1st day of May, 1924, for an increase in wages and recognition of their local unions in the metropolitan district.

"A very large number of firms doing steel erecting work [fol. 1978] have granted the conditions asked for by the iron workers, with the exception of the members of The Iron League of New York, some fourteen in number, and the firms connected with The Iron League insist on using non-union men on their steel erection work.

"Having a desire to cooperate with the owner, architect and contractor in every way possible in order to minimize delays in the progress of the building industry, thereby preventing useless financial losses, we are writing you this letter giving you the above information with the hope that you will cooperate with us by awarding your steel erection

work to a firm that employs members of the International Association of Bridge, Structural and Ornamental Iron Workers.

"The members of our organization work for any employer who works under union conditions and pays union wages, whether he be owner, architect, general contractor, sub-contractor, builder or steel erector.

"Trusting that you will give this matter due consideration, I remain,

"Very truly yours, W. J. McCain, Vice-President."

Beginning in September, 1924, and continuing even while the trial was in progress, minor difficulties occurred. In September a sub-contract for the erection of structural iron and steel was let to a so-called "fair" contractor at a higher figure than the bid of a member of the Iron League. The representatives of the International were to some extent active in this transaction and in fact solicited the letting of the contract to a "fair" contractor. There is evidence tending to prove that the contract was let at a higher figure because of the apprehension of the general [fol. 1979] contractor that there might be labor troubles on the building if the contract were awarded to a member of the league (S. M., pp. 318-328).

At various times thereafter and as late as 1926 representatives of the International threatened to call members of their locals, then working in harmony with their employers on a closed shop basis, out on strike. In some instances men were actually called out. Threats to strike were withdrawn or the men permitted to return to work only on assurance, in some cases, that with future contracts care would be taken to comply with union conditions. In some instances the threats to strike had the effect demanded by the representatives of the International, namely, the withdrawal of the "unfair" contractor and the finishing of the work by a "fair" contractor. It is unnecessary minutely to go into the details of all these incidents. The testimony as to some of them appears in the stenographer's minutes at pages 900-903, 613-624, 1013-1024, 1442-1484, 729-1776, 516-525, 385-697, 1028. They are important only as evidence tending to show that the plan or scheme of the International above outlined was being vigorously pressed and that the activities of the representatives of the Inter-

national were having their intended effect upon owners, architects and general contractors.

In February, 1925, the defendants caused the International, through the defendant Morrin and the executive board, to call a strike of their locals No. 52, ornamental iron workers, and No. 197, stone derrick men. Local 52 had been operating for years under a closed shop agreement. This had been modified from time to time and submitted to the executive board of the International for approval, as required by its constitution. Up to the time of the strike [fol. 1980] this local had been operating under this agreement, as so modified, without any objection from the International, although it had never been formally approved or disapproved. The stone derrick men were also at peace with their employers and operating closed shop.

In the New York Times of February 9, 1925 (Plaintiff's Exhibit P-21; S. M., 1158), the day before the strikes of ornamental iron workers and stone derrick men were called, an article was published headed "1,200 Iron Workers Will Strike Today". The article purported to report interviews with the defendant Morrin and other labor officials. It stated, in substance, that ornamental iron workers, derrick men, riggers and machinery movers would strike on that day, quoting defendant Morrin to that effect; that the strike was being called on building operations where steel was being erected by non-union iron workers; that it would not affect the erection of steel but was expected to halt work on fire-escapes, elevator enclosures, iron stairways, and grill work operations conducted by ornamental iron workers; that the walkout of derrick men would stop the hoisting of stone and this in turn would slow down, if not entirely stop, the work of bricklayers; that the riggers install boilers, tanks and machinery; that the activity of the iron workers' union was directed solely against the iron league of New York, whose policy is not to recognize the iron workers' union; that the union hopes that by stopping all ornamental iron work, the erection of stairways and the installation of boilers and machinery, as well as the setting of stone, the general contractors will bring pressure to bear on the iron league to recognize the iron workers' union; that union officials said that the strike call [fol. 1981] would be answered by 1,200 iron workers, 500 derrick men and 350 riggers, all of whom are members of

local unions affiliated with the International; that the strike would be called on every job in the metropolitan area where employers affiliated with the league were handling the erection of steel; that about 25 buildings would be affected; that the strikes in three trades here were to be preliminary to a nation-wide movement that might mean the tie-up of millions of dollars worth of building operations all over the country; that the national strike order would be held in abeyance until the results of the local situation were noted; that union officials indicated that, if necessary, ornamental iron workers, riggers and derrick men employed by New York builders erecting structures in other cities would be called out; that such a move would be made because of the fact that outside of New York the general contractors erect steel under union conditions but give the work in New York to a large extent to members of the league; that complete arrangements for an aggressive campaign in all the large cities had been completed by the International union's executive board; that the board would visit all the large steel centers and endeavor to unionize those cities to prevent the National Erectors Association from sending non-union iron workers into New York to support the league.

The reporter writing this article was called and testified to its correctness, saying that in substance it correctly reported statements made to him by the defendant Morrin and other union officials (S. M., 1143-1145). Morrin was called by plaintiffs as a witness before the trial ended. He was not examined, either by plaintiffs or defendants, as [fol. 1982] to the Times article nor as to the reporter's conversation with him. Neither were other union officials called to testify either that they had no interview with the reporter, or were incorrectly quoted. His testimony, therefore, stands uncontradicted and unimpeached.

Local 52 after being out on strike for a short time, unanimously voted to return to work. Later the stone derrick men returned, although the International was strongly opposed to that action. With reference to the return of Local 52 members, the defendant Morrin, in the issue of The Bridgemen's Magazine for April, 1925, said in part:

"Local 52 members return to work with scab iron workers.

"* * * Local Union No. 52 were removed and remained off several days. However, through an ill-advised

action the members of Local Union No. 52 were ordered back to work under the guise of an imaginary unauthorized agreement which they claim they had with their employers. This was in direct violation of the plans and policies established by the General Executive Council and outlined to them at their meeting and it is to be regretted that Local 52 has taken this most unwise, unreasonable and unprincipled stand. It simply means that union iron workers, members of Local Union No. 52, are working with scab iron workers of their own trade and I do not see how any local, the officers and members thereof, can justify such a course. Subterfuge of course may be used and advantage taken of technicalities, especially as they did hiding behind a supposed agreement. But that does not lessen the enormity of this offense. It would seem to me that every member of Local Union No. 52 would hide their heads in shame when they consider that they are practically acting in such a capacity to the detriment of the members of our International Association. * * *"

[fol. 1983] As to the return to work of the stone derrick men, the defendant Morrin says in The Bridgemen's Magazine (p. 126):

"Stone Derrick Men return following finishers' betrayal.

"Local Union No. 197 removed their men under instructions of the general Executive Council from the stone derrick work in New York City on all buildings in the metropolitan district and their valuable assistance was very helpful. They remained steadfast with International for a considerable time. However, Local Union No. 52 had seen fit to practically scuttle the International ship by going back in on the job. Pressure was brought to bear on the stone derrick men and other tradesmen displacing them which brought about their decision to return to work also, which they have done. However, I feel confident that such action would not have been taken by the stone derrick men were it not for the unfortunate and discreditable action of Local No. 52. * * *"

By the end of September, 1924, the plaintiffs and other members of the league were proceeding with their work without molestation and with full complements of work-

men. Strike-breakers had been employed in the early days of the strike, but it does not appear what proportion, if any of them, were still at work in September. Regular picketing had been discontinued although there is evidence of sporadic picketing on a small scale thereafter. The strike was never formally called off, but the evidence all tends to show that actually it was ended by October first (S. M., pp. 919, 921, 994). The erectors had all the men they cared to employ and plaintiffs contend, and the evidence tends to prove, that after September there was no strike actually in progress or labor trouble between them and their men; that their relations with such of their em-
[fol. 1984] ployees as had not returned to work had terminated; and that they were at peace with their employees and were entitled to conduct their business in their own way without interference from the International or its locals, with whom they had no contractual relations.

The evidence tends strongly to prove that the program above outlined and the measures employed in carrying it out became known to owners, architects and contractors, to members of the league and to all persons and firms actively interested in the building industry. The Bridgemen's Magazine was not only furnished to the local unions, thus becoming available to the members of the locals, but was sent to any one who might subscribe for it. The circular letters were mailed direct to owners, architects and general contractors, and these were followed up by personal visits and personal solicitation. With a bitter strike in progress when the first circulars were sent out, and with every one interested in the building industry keenly alive to what was transpiring from day to day which might affect him injuriously or otherwise, the conclusion is necessary that the details of this so widely disseminated plan, and the method of putting it into operation, must have been known to every one interested in the subject matter.

The evidence as above recited stands practically without contradiction. Neither the defendant Morrin nor any officer of the International or its locals was asked by defendants' counsel to deny, modify or explain any of their acts as testified to by many witnesses, or their declarations as printed in the official journal of the International. If the testimony of these witnesses is untrue or these declara-

tions are susceptible of any interpretation other than the [fol. 1985] clear import of the language used, the evidence to show this is in the possession of the defendants.

Plaintiffs contend that the defendants, with the object of forcing them to recognize the union and operate under closed shop conditions, and using in that behalf the great power and prestige of the International, have combined and conspired for the purpose of seriously injuring or destroying their respective businesses, by preventing or dissuading owners, architects and general contractors for the erection of buildings in the metropolitan district from giving to plaintiffs sub-contracts for the erection of the structural iron and steel in said buildings, employing in that behalf threats and intimidative measures calculated to cause, and which actually have caused, owners, architects and general contractors to be fearful and apprehensive that if such sub-contracts should be let to plaintiffs, strikes would follow which would delay the completion of the buildings, thereby causing great loss to the owners and general contractors, as well as to plaintiffs. In other words, plaintiffs contend that the defendants have conspired to use, have used and are still using, unlawful means to bring about an unlawful end, the unlawful end being the closed shop—a condition violative of public policy—and the unlawful means, threats and intimidation tending to and which have put owners, architects and contractors in fear and apprehension of serious injury to themselves if sub-contractors should be let to members of the league. Plaintiffs also insist that the actions of the defendants constitute an unlawful interference with interstate commerce.

Defendants contend, on the other hand, that the closed shop is legal, does not violate public policy, and that [fol. 1986] all means adopted and employed by them to induce plaintiffs and other members of the league to operate on a closed shop basis were within their legal rights and amounted only to lawful persuasion and legitimate competition and did not constitute threats or intimidation. Defendants do not deny that it was and still is their settled purpose to induce plaintiffs, by lawful means, to recognize the unions and operate on a closed shop basis. Neither do they deny that in carrying out this purpose they have attempted to induce owners, architects and general contrac-

tors to give their sub-contracts to contractors other than members of the league.

The crux of this controversy, therefore, is, first, whether the purpose of the defendants is unlawful and should be enjoined, and second, whether, if that purpose be lawful, it is attempted to be effectuated by unlawful means. This is the final test in contests of this character, as is definitely held in Interborough Rapid Transit Company v. Lavin, 247 N. Y., 65, where the court, speaking through Lehman, J., says:

"In this state the courts may interpose their mandates between contesting parties only where there is an attempt to effectuate an unlawful purpose, or to effectuate a lawful purpose by unlawful means."

The rule to be applied in determining the probative value of the evidence is found in Mammoth Oil Co. v. United States, 275 U. S., 13; 72 L. ed., 137. In that case it was sought to set aside certain leases of naval petroleum reserves on the ground, among others, that they had been obtained through a fraudulent conspiracy. Sinclair, the head of the alleged conspiracy, did not testify. It appeared that other evidence existed, within control of the alleged con- [fol. 1987] spirators, which was not introduced in opposition to the Government's case. The court held that the silence of Sinclair made strongly against the company, and that the non-production of evidence which he could offer justified the conclusion that the proof, if produced, would tend to sustain the charge. The court said:

"While Sinclair's failure to testify cannot properly be held to supply any fact not reasonably supported by the substantive evidence in the case (Northern R. Co. v. Page, 274 U. S. 65, 74; 71 L. Ed., 929, 933; 40 Fed., 47, Sup. Ct. Rep., 491) it may justly be inferred that he was not in position to combat or explain away any fact or circumstance so supported by evidence and material to the government's case [citing cases]. As to facts appearing to have been within the knowledge or power of Sinclair we find that the evidence establishes all that it fairly and reasonably tends to prove."

In the absence of denial or explanation by Morrin and his associates of their acts and declarations I must apply

this rule and hold that the evidences establishes "all that it fairly and reasonably tends to prove." In a word, if the evidence, fairly and reasonably considered, is sufficient to establish prima facie that defendants were and are attempting to effectuate an unlawful purpose or to effectuate a lawful purpose by unlawful means, I must so decide.

Certain preliminary questions should first be considered. Defendants claim that much of the evidence is remote, irrelevant and hearsay as to them, and therefore insufficient to connect them with the conspiracy. The evidence consists mainly of publications in the official journal, circulars sent to owners, architects and general contractors, declarations [fol. 1988] of officials of the International and its locals, and acts and conduct of its and their representatives testified to by many witnesses.

Certain declarations of general contractors and their agents were admitted for the limited purpose of showing their state of mind resulting from the campaign of defendants to induce them not to patronize plaintiffs, that is, as to whether defendants' activities had the effect of making them fearful of the consequences of giving further subcontracts to plaintiffs. The effect of this campaign upon owners, architects and general contractors was so satisfactorily shown by other evidence that in arriving at my conclusions I have disregarded these declarations altogether.

Regarding the numerous publications in the official journal prior to the strike of May 1, 1924, claimed by defendants as too remote, I find nothing in them showing any intention on the part of defendants to use any unlawful means to effectuate their purposes except, possibly, references to sympathetic strikes. They do show very clearly a determined and enduring purpose to induce plaintiffs to operate closed shop, and an equally strong determination of plaintiffs to continue their open shop policy and to resist all attempts to unionize them. They are pertinent evidence, therefore, to show the previous history of the contending parties, and their attitude toward one another during the years, so that their purposes and intentions might be more intelligently judged as of the crucial period commencing in July, 1924, when the new program to subdue the iron league was conceived.

I have drawn no inferences unfavorable to defendants from the published articles to the effect that certain officers of the International were involved in criminal proceedings, [fol. 1989] or that on one occasion the members of the union were advised to violate or ignore injunctions. These matters are altogether too remote to justify a conclusion that now, after the lapse of nearly 25 years, there still exists any disposition on the part of the International or its officers to defy the mandates of courts or otherwise indulge in criminal acts to accomplish their purposes. On the contrary, in The Bridgemen's Magazine of April, 1925, just after this action was commenced, and referring to it, appears the following:

"The court granted a temporary restraining order which of course tied the hands of the District Council and local officers of the Iron Workers' International Union because we have no desire to in any way violate any order of the court."

Neither was there anything in the calling of the strike of May 1, 1924, nor its prosecution during the months of May and June, to indicate an intention to use unlawful means. The strike was called partly to obtain an increase in wages from ten to twelve dollars per day, but mainly to bring about the "closed shop." While picketing was indulged in and there were the usual concomitants of a strike waged with earnestness and determination to win, there was comparatively little or no violence or other breach of the peace, and the evidence is insufficient to justify a conclusion that such as did occur was authorized by the committee in charge of the strike.

With this explanation, which, of course, does not go to the admissibility but only to the weight of the evidence, I consider all of it sufficiently connected up with defendants. It is well settled that after proof of a conspiracy, the dec- [fol. 1990] larations and conduct of the conspirators are competent evidence against one another. As said in the Hitchman case (245 U. S., 229):

"In order that the declarations and conduct of third parties may be admissible, in such a case, it is necessary to show by independent evidence that there was a combination between them and defendants, but it is not necessary

to show by independent evidence that the combination was criminal or otherwise unlawful. The element of illegality may be shown by the declarations themselves. The rule of evidence is commonly applied in criminal cases, but it is of general operation; indeed, it orginated in the law of partnership. It depends upon the principle that when any number of persons associate themselves together in the prosecution of a common plan or enterprise, lawful or unlawful, from the very act of association there arises a kind of partnership, each member being constituted the agent of all so that the act or declaration of one, in furtherance of the common object, is the act of all, and is admissible, as primary and original evidence against them. [Citing numerous cases.]"

Tested by this rule the declarations of any of the individual defendants who were representatives of the International, or any of its locals, are admissible against all of them. The Bridgemen's Magazine is admitted to be the official organ of the International, and is published by authority of its constitution. It describes itself as "the official monthly journal published by and devoted to the interests of the International Association of Bridge, Structural and Ornamental Iron Workers." Thus it is clearly the agent of the International, and such of its contents as appear to reflect the sentiments or policy of the association [fol. 1991] (and these only were admitted) are original evidence against it and the other members of the combination.

With the effect of the evidence thus limited let us analyze certain features of the situation. First, there is the effect of the vast power and influence of the International, which claims jurisdiction over all iron-workers' crafts in the building industry throughout the United States and Canada, and is engaged in a determined effort, which has continued for years, to bring about the unionization of the entire industry, already nearly complete in the metropolitan district of New York, the country's greatest industrial center, with the ultimate purpose of effecting closed shop conditions throughout the country.

The purposes and declarations of intention of an organization of that character, power, influence and standing in the industrial world, as well as its acts done in putting them into effect, stand on a different basis, so far as the

effect to be given them is concerned, than threats made by weak organizations incapable of carrying them out, or which, if carried out, would have little or no effect upon the industry in general, or upon the rights of the public. On this subject the Supreme Court, quoting from the Gompers case, say in the Hitchman case (245 U. S. 229):

"But the very fact that it is lawful to form these bodies [labor unions] with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution; or by standing on such rights and appealing to the [fol. 1992] preventive powers of a court of equity. When such appeal is made, it is the duty of government to protect the one against the many as well as the many against the one."

Second, there is the standing or right of the International to act in or create any controversy on behalf of plaintiffs' employees. The strike of 1924 was never formally terminated by defendants. Such of the members of the union as returned to work did so in defiance of orders, thereby rejecting any control of defendants over them insofar, at least, as that particular employment was concerned. Plaintiffs' employees, therefore, union and non-union, must be treated as an independent body of men having no affiliation with defendants as an organized unit. Defendants' interest in them was only such as they naturally had in the well-being of all labor, irrespective of affiliations. When the strike was actually terminated, plaintiffs had practically a full complement of men; they hired men as they needed them without respect to their labor affiliations; such of their old employes as had not returned to work had their places filled by others; there was no existing dispute between plaintiffs and their employes respecting wages, conditions of employment or otherwise.

Under these circumstances, while it is unnecessary to characterize the International as an "officious outsider", it was not the authorized agent of plaintiffs' employes, and had no more right to create a grievance for them, or in-

jure plaintiffs' business, than any "outsider" would have had.

In Hitchman Coal & Coke Co. v. Mitchell, 245 U. S., 229, 62 L*d*. Ed. 260, it appeared that the United Mine Workers of America, a labor organization, attempted to unionize [fol. 1993] the mines of the plaintiff, whose employes were all non-union. With respect to the right of this organization to interfere at all with the employes of the Hitchman Company, the Supreme Court said:

"The fact that the employment is at the will of the parties respectively, does not make it one at the will of others. The employe has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion and by the weight of authority the unjustified interference of *third persons* is actionable although the employment is at will." * * *

"The case involves no question of the rights of employes. Defendants *have no agency for plaintiff's employes*, nor do they assert any disagreement or grievance in their behalf. In fact there is none; but if there were *defendants could not without agency set up any rights that employes might have*. The right of the latter to strike *would not give to defendants the right to instigate a strike*. The difference is fundamental." * * * (Italics mine.)

Again:

"The present is not a case of merely withholding from an employer an economic need—as a supply of labor—until he assents to be governed by union regulations. Defendants have no supply of labor of which plaintiff stands in need."

In Interborough Rapid Transit Company v. Lavin, 247 N. Y. 65, it appeared that the Interborough had a union of its own employes which prohibited its members from joining other unions. The defendant Lavin and other attempted to induce these members to join a rival organiza- [fol. 1994] tion. A strike resulted which was unsuccessful. Then the defendants, apparently working in behalf of the rival organization, attempted to induce members of the plaintiff's union to join theirs and *conceal* that fact from their employers. The Court of Appeals left open the ques-

tion as to whether the defendants, representing the rival organization and thus being outsiders, had the right to influence the Interborough's employes to join their union and *conceal* that fact from their employers.

On that question the Court said:

"The plaintiff's employes may have the right to leave their organization singly or in combination. Yet interference with that organization by an *officious outsider* merely for the purpose of injuring the plaintiff, or inducement maliciously held out to the employes to leave the organization, might constitute a wrong which the courts would have power to remedy. (Beardsley v. Kilner, 236 N. Y. 80.) * * * They [the defendants] have urged the plaintiff's employes to join the Amalgamated Association *secretly* and to *conceal* their new affiliations from their employer while remaining in its employ. It may be that such action on their part goes beyond the limits of permissible *interference by an outsider* in the relations between employer and employe. * * * Even though we should assume, without deciding, that the plaintiff's employes are themselves not under a contractual or other legal obligation to court discharge by information to the plaintiffs that they are joining the Amalgamated Association the question would still remain whether the defendants are justified in urging the employes to *conceal* facts which if disclosed would lead inevitably to their discharge. That question has not been argued on this appeal. We do not answer it [fol. 1995] now. Many facts must enter into its solution. Not all appear in this record. We merely state the question to point out that we are in no wise determining it." (Italics mine.)

Third, the position of owners, architects and general contractors in the controversy. They are third parties—neutrals—who may suffer serious injury if they will not join defendants in their efforts to injure plaintiffs. The quarrel is between defendants and the iron league, and defendants seek to use these innocent third parties as a club to subdue the league. Their intention in this regard is shown by publications in the official journal. For instance, in the Bridgemen's Magazine for October, 1924, in a report of the defendant Morrin, he said:

"* * * in this strike we determined that we were going to squeeze the fellow that we had to squeeze because in the first place the fellow that needed to be woke up was the owner, the architect and the fellow who had the contract to let. Those were the lines we worked on for the first three months of the strike. * * * We had to go out and establish to those owners that we were in a position to command consideration and we did. We have had a number of large jobs, like apartment houses, that have been delayed so long that they are now behind the renting period. I know of one man who was down claiming that he was going to lose considerable rents and the amount involved was something like $480,000. * * *"

"We established with those owners, architects and contractors the fact that there was a real live fighting Iron Workers' organization in this district. * * *"

"* * * the owners, employers and architects have learned a bitter lesson by the delays caused by this strike. [fol. 1996] I feel very confident that within a year's time we will be able to bring pressure to bear on these fellows to induce them to consider the letting of their contracts to fair contractors and when that is done our fight will be won here. We are in the position of an army. * * *"

The sentence in the Hitchman case, viz., " 'So use your own property as not to injure that of another person'; but by more proper interpretation, 'so as not to injure the rights of another' " seems to apply in full force to the pressure brought to bear on these neutrals.

Fourth, injury to the public resulting from defendants' acts. Besides the immediate and direct damage that plaintiffs' business might suffer, the means employed by defendants would naturally tend to disturb the freedom and independent action of all property owners contemplating entering into building contracts; of all architects employed by them to draw plans and supervise construction; all general contractors, including those operating closed shop; all sub-contractors operating closed shop whose employes might be ordered to strike sympathetically; all employes on buildings who, although at peace with their employers, might be ordered out on sympathetic strikes; and indirectly all who deal with owners, architects, general contractors, sub-contractors and employes. Such a condition of affairs,

especially when attempted to be effectuated in a large and populous area, and in an industry of great magnitude, would have such a widespread effect and involve such grave economic disturbances as to affect seriously the free and natural flow of commerce and thus cause injury to society itself.

[fol. 1997] As was said in Iron Molders' Union v. Allis-Chalmers Co. (C. C. A. Sixth Circuit), 166 Fed. 45, 51:

"In contests between labor and capital the only means of injuring each other that are lawful are those that operate directly and immediately upon the control and supply of work to be done and of the labor to do it, and thus directly affect the apportionment of the common fund, for it is only at this point exists the competition the evils of which organized society will endure rather than suppress the freedom asd initiative of the individual. But attempts to injure each other by coercing members of society who are not directly interested in the pending controversy to make raids in the rear cannot be tolerated by organized society, for the direct, the primary attack is on society itself."

Fifth, the right of plaintiffs to conduct their business in their own way. This is a right of property protected by the constitution (Truax v. Corrigan, 257 U. S. 312, 66 L. Ed. 254). As said in the Gompers case, 221 U. S. 418, 55 L. Ed., 797, and quoted in the Hitchman case:

"The court has frequently held that the employer is as free to make non-membership in a union a condition of employment as the workingman is free to join the union, and that is a part of the constitutional rights and private property, not to be taken away even by legislation, unless through some proper exercise of the paramount police power."

The vast power of the International; its ability to effectuate its purpose to injure unless plaintiffs yield the matter in dispute; its determination to succeed; its intention, forcibly impressed on plaintiffs and innocent third parties, [fol. 1998] to injure them unless they submit; the partial

success of its efforts and public injury resulting therefrom; its want of authority to speak for plaintiffs' employes—all these are elements of great potency in determining whether a case of "unlawful means to effectuate" defendants' purposes is made out.

In Hitchman Coal & Coke Co. v. Mitchell, supra, representatives of the United Mine Workers of America, a labor organization, sought by unfair and deceptive practices to induce plaintiff's non-union workmen to join the union, in violation of their contracts of employment. The Court held that an employer who has made non-membership in a labor union a condition of remaining or continuing in employment is entitled to be protected in the enjoyment of the resulting status, as in any other legal right, saying further:

"In any aspect of the matter it cannot be said that defendants were pursuing their object by *lawful* means." * * *

"Upon all the facts, we are constrained to hold that the purpose entertained by defendants to bring about a strike at plaintiff's mine in order to compel plaintiff, through fear of financial loss, to consent to the unionization of the mine as a lesser evil, was an unlawful purpose, and that the methods resorted to by Hughes were unlawful and malicious methods, and not to be justified as a fair exercise of the right to increase the membership of the union."

In Eagle Glass & Manufacturing Co. v. Rowe, 245 U. S., 275, 62 L. Ed. 286, it was held that a conspiracy of a labor organization to induce employees to violate their contracts with their employers, which provided that during their employment they would not join a labor union, constituted an unlawful method of compelling the employer to unionize [fol. 1999] its factory and should be enjoined.

Neither of these cases, it will be observed, involved any question of boycotting, yet the Supreme Court held that the plaintiff's rights had been unlawfuly invaded.

There is considerable confusion in different jurisdictions as to whether and under what circumstances boycotts, primary or secondary, may be enjoined. Likewise. the terms "primary" and "secondary", as describing the boycott, lack harmonious definition. It seems, generally speaking, that a primary boycott is one used against an industrial

antagonist directly, while a secondary boycott is against an outsider because of his influence or connection with the antagonist. In some states both primary and secondary boycotts are held illegal, in others legal. As said by Mr. Justice Lamar in the Gompers case:

"Courts differ as to what constitutes a boycott that may be enjoined. All hold that there must be a conspiracy causing irreparable damage to the business or property of the complainant. Some hold that a boycott against the complainant by a combination of persons not immediately connected with him in business, can be restrained. Others hold that the secondary boycott can be enjoined, where the conspiracy extends not only to injuring the complainant, but secondarily coerces or attempts to coerce his customers to refrain from dealing with him by threats that unless they do, they themselves will be boycotted."

Writing on the same subject Mr. Chief Justice Taft, in the prevailing opinion in Truax v. Corrigan, supra, says:

[fol. 2000] "It is to be observed that this is not the mere case of a peaceful secondary boycott, as to the legality of which courts have differed and states have adopted different statutory provisions. A secondary boycott of this kind is where many combine to injure one in his business by coercing third persons, against their will, to cease patronizing him by threats of similar injury. In such a case the many have the legal right to withdraw their trade from the one, they have the legal right to withdraw their trade from third persons, and they have the right to advise third persons of their intention to do so when each act is considered singly. The question in such cases is whether the moral coercion exercised over a stranger to the original controversy by steps in themselves legal becomes a legal wrong."

Duplex Printing Press Co. v. Deering, 254 U. S., 443, 65 L. Ed. 349, involved charges of interference with interstate commerce by the use of the secondary boycott. Following Pettibone v. United States, 148 U. S., 197, 37 L. Ed. 419, it defines a conspiracy as "a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or to accomplish a purpose not in

itself criminal or unlawful by criminal or unlawful means." And a secondary boycott is defined as a combination not merely to refrain from dealing with a person or to advise or by lawful means persuade his customers to refrain, but to exercise coercive pressure upon such customers, actual or prospective, in order to cause them to withhold patronage through fear of loss or damage to themselves should they see fit to deal with him.

In New York neither a primary nor a secondary boycott is unlawful per se. Where the boycott, even though sec- [fol. 2001] ondary, is of non-union made materials or articles of manufacture, and there is no intention maliciously to injure employers or third parties, but all acts complained of are committed in an honest effort to advance the legitimate aims of labor, such acts are not unlawful and may not be enjoined. On the other hand, secondary boycotts of particular dealers or manufacturers, where no question of boycotted material is involved, should be enjoined, if there exists a malicious intent and purpose to destroy the good will or business of such dealer or manufacturer (Bossert v. Dhuy, 221 N. Y., 355; Auburn Draying Co. v. Wardell, 227 N. Y., 1; Aeolian Co. v. Fisher, 27 F., 2d, 560).

It seems that more latitude is allowed labor in boycotting manufactured materials, thus indirectly harming their manufacturer, than in boycotting the manufacturer himself directly. Whether this distinction is sound I need not attempt to determine, but its existence is referred to by Mr. Justice Brandeis in his dissenting opinion in the Duplex case. After stating that his view is in harmony with the views of the Court of Appeals of New York, he continues:

"For in New York, although boycotts like that in Loewe v. Lawlor, 208 U. S., 274, * * * *are illegal because they are conducted, not against a product, but against those who deal in it*, and are carried out by a combination of persons, not united by common interest but only by sympathy (Auburn Draying Co. *v.* Wardell, 227 N. Y., 1, * * *), it is lawful for all members of a union, by whomever employed, to refuse to handle *materials* whose production weakens the union." (Italics mine.)

In Auburn Draying Co. v. Wardell, 227 N. Y., 1, it appeared that the union notified plaintiff that unless it took [fol. 2002] necessary means to get its men to join the union

it would be placed on the unfair list. Plaintiff's employees refused to join. Thereupon, because of notices sent to builders, plumbers and others, they discontinued dealing with plaintiff for fear of loss of business or labor troubles.

In the course of a very learned discussion of the whole subject, the court say:

"The defendants are intentionally attempting to coerce the plaintiff to unionize its business by aggressively inducing its established and potential customers to ignore its existence in order to be free from the loss and injury which the action of the defendants would otherwise bring to those customers" (p. 10).

"The defendants were an organized combination with a unified intent and purpose, causing irreparable damage to the business and property of the plaintiff. Financial pressure, loss of business, interference with freedom of action were imposed by them in order to force the unionization. The law should be and is that the means were unjustifiable and unlawful and the defendants should be enjoined from using them (Hitchman Coal & Coke Co. v. Mitchell, 245 U. S., 229; Burnham v. Dowd, 217 Mass., 351; Beck v. Railway Teamsters' Protective Union, 118 Mich., 497; Purvis v. United Brotherhood, 214 Pa. St., 348; Fink & Son v. Butchers' Union No. 422, 84 N. J. Eq., 638; Harvey v. Chapman, 226 Mass., 191; W. A. Snow Iron Works, Inc. v. Chadwick, 227 Mass., 382; Martell v. White, 185 Mass., 255; Cornellier v. Haverhill Shote Manufacturers Assn., 221 Mass., 554; New England Cemet Gun Co. v. McGivern, 218 Mass., 198; Bausch Mach. Tool Co. v. Hill, 120 N. E. Rep., 188 (Mass.); Smith v. Bowen, 121 N. E. Rep., 814 (Mass.))" (p. 12).

In Bossert v. Dhuy, supra, it was held that the secondary boycott therein involved was not unlawful, but the decision [fol. 2003] was predicated on findings of fact which were held to be controlling, viz., that defendants did not intend maliciously to injure plaintiffs. This renders this decision of no importance here because of my finding, hereinafter made, that the defendants were actuated by a malicious intent and purpose to injure plaintiffs. The court, further limiting the scope of this decision, say:

"In the case now before us, if the defendants had called upon the public generally to discontinue using the plaintiffs' material, and had sought to prevent all persons by communi-

cations, written or otherwise, from dealing with the plaintiffs, their acts would have been illegal."

Exchange Bakery v. Rifkin, 245 N. Y., 260, relied on by defendants, involved the legality of peaceful picketing of a restaurant. The court held that notwithstanding the absence of an actual strike, equity has no power to enjoin such picketing when there are no threats, intimidation or kindred disorders; and that despite incidental damage to the employer, labor may combine to accomplish that which is lawful so long as the means employed are proper. Three judges dissented. However, the court clearly laid down the rule later approved in Interborough v. Lavin, that "any combination must be for lawful ends secured by lawful means," and differentiated the case from those involving boycotts, saying:

"In writing as we have done, we have in mind cases where the strike, the picketing or the lockout is made use of by associates in the same trade or business where the end sought therefor directly affects those, masters or men, engaged therein. We do not consider so-called sympathetic [fol. 2004] strikes, boycotts or lockouts where interest is more remote. Questions that may arise under such circumstances are not before us."

In Aeolian Co. v. Fisher, 27 F. (2d), 650, the District Court denied a motion for a temporary injunction. This order was affirmed by a divided court (29 F. 2d., 679). It was held by the District Court that while a secondary boycott is not illegal per se under the law of New York, it is condemned when inspired by malicious intent and purpose to destroy the good will or business of those against whom it is directed. The facts were somewhat similar to the instant case but they did not disclose any affirmative and aggressive campaign to prevent plaintiffs, through coercive pressure brought to bear on innocent third parties, from obtaining new contracts.

This is by no means a complete resume of the New York decisions on this subject; but it should serve to show that there is no inconsistency between them and the decisions of the United States Supreme Court, at least insofar as the principles controlling this case are concerned. All recognize the rule that means employed to effectuate a given end,

in order to be enjoined, must be unlawful, and that secondary boycotts, when directed, not against a product, but against the persons who deal in it, when inspired by malicious intent to injure those against whom it is directed, constitute "unlawful means." They all agree that the principle underlying this doctrine is that while both employers and employes have fundamental rights which they are entitled to enforce and defend, those rights are not so absolute that they may be exercised by either against the other without qualification, but that, like other rights that exist in [fol. 2005] civilized society, they must always be exercised with reasonable regard for the conflicting rights of others (Hitchman Coal & Coke Co. v. Mitchell, supra).

The harmony existing in the decisions in these respects makes the disposition of this case depend upon a question of fact, viz., whether the concerted action of defendants exhibits a malicious intent to injure or destroy plaintiffs' business by the use of the secondary boycott, or, without regard to nomenclature, by any conduct constituting an unlawful invasion of plaintiffs' rights.

The International is a combination which, although organized for lawful purposes, might be used by the officials controlling its activities to commit unlawful acts. Through these officials it conceived and attempted to effectuate a plan to subdue the iron league by bringing "pressure" to bear on innocent third parties. Its great power and prestige gave this pressure a driving force and effect it would not otherwise have had. Although the plaintiffs, and their associates in the league, themselves constituted a powerful combination, they were helpless against efforts to influence the action of these neutrals, who were not in any way associated with the league. Actually there was double pressure, that brought to bear on third parties directly, which might involve serious financial loss to them, and that exerted against plaintiffs indirectly, arising through danger of loss of patronage from those third parties.

That the defendants intended injury to plaintiffs' business unless they abandoned their open shop policy is quite clear. To hold otherwise would render the whole plan innocuous. One cannot read the articles in the Bridgemen's Magazine, the interviews in the New York Times, the circular letters sent out from time to time, the testimony as [fol. 2006] to sympathetic strikes of locals 52 and 197, the

testimony as to interferences with the orderly course of work on many jobs on which the league had sub-contracts, and as to the loss by a member of the league, through defendants' interference, of at least one sub-contract, without being convinced of the defendants' definite purpose, by concerted action amounting to a conspiracy, to injure plaintiffs' business.

But whether a purpose is shown intentionally to injure owners, architects and general contractors depends on other considerations. The articles referred to indicate that defendants' representatives delegated to call on these third parties personally were instructed to point out to them the advantage of complying with the defendants' wishes, to request that they favor union contractors, and to make all honorable efforts to induce them to give their steel erection work to such contractors. This evidence might indicate, considered alone, that only peaceful persuasion was to be used; but any such inference is repelled when this evidence is considered in connection with other expressions and actions of defendants. Thus in the October number, the defendant Morrin said, referring to these neutrals, that "we determined to squeeze the fellow that we had to squeeze", and that "the fellow that needed to be woke up was the owner, the architect and the fellow who had the contract to let". There are expressions criticizing former actions of these third parties and indicating a clear intention to bring pressure to bear on them. Indeed, the word "pressure" is actually used in this article, the expression in part being "we will be able to bring pressure to bear on these fellows". The interviews in the Times article show that the the strikes of locals 52 and 197 were called [fol. 2007] to induce owners, architects and general contractors to bring pressure to bear on the league. These sympathetic strikes and interferences with other pending contracts were acts well calculated to impress these neutrals with the determination of defendants to effectuate their purposes, even if strikes had to be called on all buildings on which the league had sub-contracts.

The attitude of defendants toward owners, architects and general contractors is clearly indicated by the language of the circular letters, interpreted in the light of all the other facts and circumstances. These letters, which were sent

direct to owners, architects and general contractors as new buildings were announced in Dodge's reports, after referring to the "useless financial losses" that result from delays and stating that "The Iron League of New York, about fourteen in number" "insist on using non-union men on their steel erection work", continue:

"The members of the Bridge, Structural and Ornamental Iron Workers' Union *work* for any employer who conducts his erection work under *union conditions* and pays union wages, whether he be owner, architect, general contractor, *sub-contractor,* builder or *steel erector.*" (Italics mine.)

This language meant, when construed in the light of the disturbed conditions then existing, that members of the unions would not "work" for "sub-contractors" or "steel erectors", or any employers, who use "non-union men on their steel erection work"; and these words, used by a powerful organization many times in the course of a determined campaign to subdue plaintiffs, had acquired, to quote from Gompers v. Buck's Stove & R. Co., 221 U. S. [fol. 2008] 438, 55 L. Ed. 805, "a force not inhering in the words themselves, and therefore exceeding any possible right of speech which a single individual might have. Under such circumstances they became what have been called 'verbal acts', and as much subject to injunction as the use of any other force whereby property is unlawfully damaged".

These circulars, therefore, emphasized as they were by publications in the official journal, newspaper interviews, personal follow-up calls, sympathetic strikes and interferences with work on pending jobs, constituted a warning, backed by all the power of the International, that its future policy would be to strike all buildings on which any of the members of the iron league might be awarded sub-contracts.

This warning, repeated whenever a new building contract was to be let, was made so emphatic by defendants' other activities as to affect the freedom and independence of owners, architects and general contractors, who, knowing of the long-continued efforts of the International to bring the league to terms, and of the campaign then being carried on for that purpose, quite naturally became apprehensive that there would be "labor troubles" on future

construction if they continued to patronize the league in awarding sub-contracts.

Weighing the evidence according to the standard prescribed in Mammoth Oil Co. v. United States, supra, this conduct amounted to threats and intimidation by a combination and conspiracy, directed against third parties not in any way connected with any controversy between plaintiffs and defendants, to inflict a substantial financial loss upon them unless they submitted to defendants' demands. It contains all the elements of a secondary boycott which [fol. 2009] involved not only serious injury to neutrals, but an invasion of plaintiffs' rights as well (see Martin on the Modern Law of Labor, Sec. 51, p. 72; Sec. 77, p. 117; Sec. 69, p. 104).

That defendants' actions were inspired by malice in the legal sense, as distinguished from actual malice, appears from the definition found in the Hitchman case:

"Intentionally to do that which is calculated in the ordinary course of events to damage, and which does in fact damage another in that other person's property or trade, is actionable, if done without just cause or excuse. And the intentional infliction of such damage upon another without justification or excuse is malicious in law."

Therefore, I find the fact to be that the defendants, in carrying out their plan to cause the plaintiffs and the other members of the iron league, against their will, to abandon their open shop policy, intentionally entered into a conspiracy to effectuate said plan, and that the acts and conduct of defendants in that behalf were done and committed with the object and purpose intentionally to injure or destroy plaintiffs' business unless they would agree to operate on a union closed shop basis, and intentionally to injure the business and property rights of owners, architects and general contractors, unless they would refuse to award sub-contracts to plaintiffs and other members of the league. I further find that the said acts and conduct of defendants were done maliciously, that is, intentionally and without legal excuse or justification.

Whether defendants' action be considered from the standpoint of injury to plaintiffs' business amounting to an invasion of their constitutional rights (Hitchman Coal & [fol. 2010] Coke Co. v. Mitchell, supra; Eagle Glass Manu-

facturing Co. v. Rowe, supra), or as a secondary boycott involving threatened injury to the business of innocent third parties, or detriment to the general public, the legal conclusion from all the facts must be that they constituted an "unlawful means" to effectuate defendants' purposes (Auburn Draying Co. v. Wardwell, 227 N. Y. 1; Duplex Printing Press Co. v. Deering, 254 U. S. 443, 65 L. Ed. 349; Eagle Glass Manufacturing Co. v. Rowe, 245 U. S. 275, 62 L. Ed. 286; Bossert v. Dhuy, 221 N. Y. 355; Interborough v. Lavin, 247 N. Y. 65; Gompers v. Buck's Stove & R. Co., 221 U. S. 418, 55 L. Ed. 797; Truax v. Corrigan, 257 U. S. 312, 66 L. Ed. 254).

To summarize the grounds upon which I base this conclusion: the means employed by defendants to effectuate their purposes were without legal excuse or justification and therefore unlawful (1) because said "means" have caused intentional damage to plaintiffs' business through threatened injury to the business of innocent third persons, (2) because they amounted to intentional coercion of neutrals for the purpose of injuring plaintiffs, (3) because they constituted an injury to the general public, and (4) because, after the strike of 1924 was actually over, and plaintiffs were carrying on with a full complement of workmen, defendants had no authority or standing to interfere between plaintiffs and their employes, or to create or attempt to remedy any grievance in their behalf.

Plaintiffs contend that a condition of complete unionization of a great industry extending over a large territory, with the ultimate purpose of extending it throughout the [fol. 2011] country would be unlawful as violative of public policy, and that therefore defendants are attempting to effectuate an unlawful end. There are persuasive decisions in some states which appear to sustain this contention. In my view it is unnecessary to decide the question. Regarding the end as unlawful, that, in and of itself, does not entitle plaintiffs to an injunction. They have entered into no closed shop agreements. They are just as determined as ever not to do so or to submit to closed shop conditions. Any lawful means employed to induce them to change their policy would be ineffective. Their power of resistance, which has withstood pressure for over twenty years, does not appear to have weakened. They may successfully resist any lawful means employed by defendants by continu-

ing to refuse to operate closed shop, or sign any closed shop agreements. Therefore, as they have in their own hands the means of preventing defendants from accomplishing an unlawful end, where only lawful means are employed, they show no good reason for equitable interposition by injunction on that ground.

Defendants attempt to justify their actions by claiming that they amount only to lawful competition. In other words, they insist that they have the right to solicit business for contractors who are fair to them and to prevent other contractors whom they consider unfair from getting business. I see no force in this position. Defendants are not engaged in the erection of structural iron and steel. They are not asking that sub-contracts be let to the International or any of its locals. They are simply volunteers, unauthorized by the plaintiffs' employees or by the "fair" contractors, attempting to get business for them at the expense of the "unfair" contractors, and this when no strike is in progress.

[fol. 2012] On this question it is said in the Hitchman case:

"Defendant's acts cannot be justified by any analogy to competition in trade. They are not competitors of plaintiff; and if they were their conduct exceeds the bounds of fair trade. Certainly if a competing trader should endeavor to draw the custom from his rival, not by offering better or cheaper goods, employing more competent salesmen or displaying more attractive advertisements, but by persuading his rivals' clerks to desert him under circumstances rendering it difficult or embarrassing for him to fill their places, any court of equity would grant an injunction to restrain this as unfair competition."

Viewing the whole case from every angle, I cannot regard it as one involving a controversy between plaintiffs and the workmen in their employ after the failure of the strike. These men went to work under plaintiffs' conditions and neither complained nor now complain of unfair treatment. They have not struck nor threatened to strike. They have no need of a champion to redress their grievances, for they have asserted none.

The contest is really between a powerful labor organization, on the one hand, and a powerful employers' organiza-

tion, on the other, over conflicting principles or policies, disassociated from any existing dispute as to labor conditions on any specified work. The point of conflict is where the league's open shop policy meets the International's closed union shop policy. Defendants seek to establish their policy, not in aid of plaintiffs' employes on any particular job or jobs, but for the benefit that will thereby flow to labor generally. And they are endeavoring to break down plaintiffs' resistance, and to compel them to aban- [fol. 2013] don their policy, by injuring their business through pressure brought to bear on their customers, the owners, architects and general contractors.

If plaintiffs were attempting to compel defendants to abandon their closed union shop policy by coercive measures calculated to injure their cause, courts of equity should and undoubtedly would enjoin them for unlawful encroachment on defendants' constitutional rights. For precisely the same reasons the defendants should be prevented from encroaching upon plaintiffs' fundamental rights. The rule that one's rights must always be exercised with reasonable regard for the conflicting rights of others (Hitchman Coal & Coke Co. v. Mitchell, supra), must work both ways.

Plaintiffs' contention that the conduct of defendants constitutes an unlawful interference with interstate commerce is based upon the fact that in some cases sub-contracts include the fabrication in other states of steel to be shipped into and erected in New York. It is insisted that such contracts are interstate in character because contemplating the interstate shipment of steel in their performance, and that the erection of the steel so shipped is an inseparable part of an interstate transaction which must be treated as a whole. By preventing them from getting such sub-contracts, plaintiffs assert, defendants are preventing the shipment of steel into the state.

There is no evidence showing the precise method or process of erecting steel; but it is common knowledge that it requires local labor and erecting equipment and machinery; also that each piece of fabricated steel ultimately becomes an integral part of the building.

[fol. 2014] Under these circumstances the work of erecting steel must be regarded as merely local, and as constituting no part of an interstate transaction (General Railway Signal Co. v. Virginia, 246 U. S. 500, 62 L. Ed. 854;

Browning v. Waycross, 233 U. S. 16, 58 L. Ed. 828; Kansas Steel Co. v. Arkansas, 269 U. S. 148, 70 L. Ed. 204); and interference with such work, by strikes or otherwise, would not amount to interference with interstate commerce.

The facts do not bring this case within the doctrine of those decisions dealing with machines, such as a printing press or ice plant, shipped into a state in parts to be there assembled and erected by skilled labor and tested before delivery (York Manufacturing Co. v. Calley, 247 U. S. 21, 62 L. Ed. 963).

Moreover, there was here no intent or purpose to interfere with interstate commerce. Defendants' ultimate object was to compel plaintiffs to submit to the closed shop policy or suffer the consequences in loss of contracts. Any reduction in the amount of fabricated steel shipped into the state resulting from the success of defendants' endeavors to prevent plaintiffs from getting subcontracts, would be merely an incidental injury, if any, to interstate trade. Plaintiffs' steel was not condemned as unfair. Interference with its movement was not defendants' primary aim. Consequently there was no actionable interference with interstate commerce (Bradford Cut Stone Co. v. Journeymen S. C. Assn., 274 U. S. 37, 71 L. Ed. 916; Industrial Assn. of San Francisco v. United States, 268 U. S. 64, 69 L. Ed. 54).

The evidence shows that defendants intend to continue their efforts completely to unionize the building industry in the Metropolitan District of New York and elsewhere. [fol. 2015] The union closed shop is their settled policy. They have not indicated any intention to recede from this position, nor to abandon their plan to force the plaintiffs to yield the matter in dispute, nor to refrain from doing the acts and things complained of. Indeed, their attitude is that they are legally justified, so long as they commit no breach of the peace, in their endeavors to prevent owners, architects and contractors from patronizing plaintiffs by the methods which I have found unlawful. Consequently the injury to plaintiffs resulting from defendants' acts must be regarded as a continuing one involving injury to property, and pecuniary loss incapable of present estimation. This entitles plaintiffs to an injunction.

Local 52, Edward Coleman, its President, and Henry Wolf asked that the action be dismissed as to them. Although the members of this local struck in February, 1925,

on orders of defendants, when they had no quarrel with their employers, and merely in sympathy with the structural iron workers, the union very soon thereafter, by formal resolution, called off the strike and ordered its men to return to work. There is no evidence showing that local 52 or its officials took any other part in the efforts to use undue pressure on plaintiffs, or on owners, architects and general contractors. By refusing to continue to obey the orders of the International it withdrew from the conspiracy to injure plaintiffs' business. It still remains, however, a member of the International and subject to its lawful orders. Whether, if new orders were given, it would obey or disobey cannot now be foreseen. If and when it should conclude again to follow defendants' orders, the injunction against the other defendants will include it and its officers [fol. 2016] as agents or representatives of defendants. But as matters now stand these defendants are entitled to a dismissal.

Defendants have moved to strike out certain parts of the testimony. Where, as here, a combination is established by independent evidence, testimony to show that its objects and purposes are unlawful takes a very wide range (Hitchman Coal & Coke Company, 245 U. S. 229; 62 L. Ed. 260). In view of this I am satisfied with the rulings made at the trial and accordingly deny the motions to strike out.

Defendants do not in their briefs ask any relief based on their affirmative defenses and counterclaims. Obviously, however, my conclusions on other branches of the case would mean the denial of any such relief.

The decree should run against the defendants, Paul J. Morrin, individually and as president of the International, Wm. J. McGinn, individually and as agent of the International, Local No. 40, and Charles Massey, individually and as agent thereof, Local No. 361, and Earl Calvert, individually and as agent therefo, and Local No. 197, all of whom committed some overt act in aid of the conspiracy or otherwise actively participated in its activities.

Pursuant, therefore, to the power and authority vested in me by the order of reference, and after full consideration of the evidence and the law applicable thereto, I find and decide as follows:

1. That the defendants last above-named, their officers, agents, representatives and employees, should be perma-

nently restrained and enjoined from inducing, or attempt-
[fols. 2017-2036] ing to induce, owners, architects or general contractors to let no subcontracts to plaintiffs for the erection of structural iron and steel on buildings now being or to be erected in the Metropolitan District of New York, by sending to them circulars or other writings stating, threatening, warning or intimating, or by personally, or in any other manner, stating, threatening, warning or intimating, that members of the unions associated with the International may or will refuse to work on buildings upon which plaintiffs have or may have sub-contracts, or by ordering, instigating, carrying on or supporting sympathetic strikes on buildings upon which plaintiffs have or may have subcontracts, or from otherwise attempting by coercive pressure, threats or intimidation, or other unlawful means, to compel or influence owners, architects and general contractors not to patronize the plaintiffs.

2. That as to the other defendants the action should be dismissed without costs.

3. That plaintiffs are entitled to recover their costs and disbursements herein.

Dated October 30, 1929.

William M. Cannon, Referee.

[fol. 2037] In United States District Court for the Southern District of New York

Levering & Garrigues Company et als., Plaintiffs,

against

Paul J. Morrin, Individually and as President of International Association of Bridge, Structural & Ornamental Iron Workers, et als., Defendants

Final Decree

This cause coming on to be heard at this term upon the pleadings and proofs and the report and decision of the Master dated October 30, 1929, and the exceptions of the plaintiffs and defendants filed thereto, the said cause having been referred by consent to the Master to hear and de-

termine all the issues herein, and having been argued by Merritt Lane, Esquire, of counsel with Edward Maxson, Esquire, attorney for the plaintiffs, and Frank P. Walsh, Esquire, attorney for the defendants, and due consideration being had of the matter;

It is, on this 14th day of February, 1930, ordered, adjudged and decreed:

1. That the exceptions of the plaintiffs and the defendants to the report of the Master be, and the same are, overruled and the report be and the same is confirmed;

[fol. 2038] 2. That Paul J. Morrin, individually and as President of the International Association of Bridge, Structural and Ornamental Iron Workers; William J. McGinn, individually and as agent of the International Association of Bridge, Structural and Ornamental Iron Workers; Local No. 40 of the International Association of Bridge, Structural and Ornamental Iron Workers and Charles Massey, individually and as agent thereof; Local No. 361, International Association of Bridge, Structural and Ornamental Iron Workers and Earl Calvert, individually and as agent thereof; Local No. 197, International Association of Bridge, Structural and Ornamental Iron Workers, and all officers, agents, representatives and employees of the aforementioned defendants, and they are hereby permanently restrained and enjoined from inducing, or attempting to induce owners, architects or general contractors to let no sub-contracts to plaintiffs for the erection of structural iron and steel on buildings now being or to be erected in the Metropolitan District of New York, by sending to them circulars or other writings stating, threatening, warning or intimating, or by personally, or in any other manner, stating, threatening, warning or intimating, that members of the unions associated with the International may or will refuse to work on buildings upon which plaintiffs have or may have sub-contracts, or by ordering, instigating, carrying on or supporting sympathetic strikes on buildings upon which plaintiffs have or may have sub-contracts, or from otherwise attempting by coercive pressure, threats or intimidation, or other unlawful means, to compel or influence, owners, architects and general contractors not to patronize the plaintiffs;

[fol. 2039] 3. That a perpetual writ or writs of injunction issue out of this Court for the purpose aforesaid directed to the defendants and other above permanently enjoined;

4. That the bill be dismissed as against William J. Wade, individually; Edward Coleman, individually and as President of Local No. 52, International Association of Bridge, Structural & Ornamental Iron Workers; David Baxter, as President of Local No. 170, International Association of Bridge, Structural & Ornamental Iron Workers; Local No. 170, International Association of Bridge, Structural & Ornamental Iron Workers; John Snyder; Henry C. Wolf; and Owen J. O'Brien, be, and the same is hereby dismissed without costs;

5. That the defendants, Paul J. Morrin, individually and as President of the International Association of Bridge, Structural and Ornamental Iron Workers; William J. McGinn, individually and as agent of the International Association of Bridge, Structural and Ornamental Iron Workers; Local No. 40, International Association of Bridge, Structural & Ornamental Iron Workers and Charles Massey, individually and as agent thereof; Local No. 361, International Association of Bridge, Structural and Ornamental Iron Workers and Earl Calvert, individually and as agent thereof; Local No. 197, International Association of Bridge, Structural and Ornamental Iron Workers, do pay to the plaintiffs herein their proper costs, charges and disbursements herein, as taxed by the Clerk of this Court, amounting to the sum of $6,767.65, and that there be included in said taxed costs the amounts paid by the plaintiffs for the copies of the stenographic record for the use of the Master and of the plaintiffs, and any sums paid by [fols. 2040-2180] the plaintiffs or for which the plaintiffs may be liable for stenographic services to the Master, and for any sums paid by the plaintiffs or for which the plaintiffs may be liable for the Master's compensation, and that if the same be not paid within thirty days from this date, then at the request of the plaintiffs, or their counsel, an execution shall issue for the enforcement of the payment of said costs;

6. That there be allowed to William M. Cannon, Esq., as compensation for his services as Master herein, the sum of

$10,000.00 which sum was consented to, which said sum shall be borne and paid by the defendants hereinbefore enumerated within thirty days from the date of this decree;

7. That the temporary restraint granted by the order of this Court, dated the 11th day of March, 1925, and since continued by order of this Court, be, so far as inconsistent with the terms of this decree, and the same is hereby in all respects vacated, including the provision therein with respect to the injunction bond given by the plaintiffs, and that the said injunction bond be, and the same is hereby cancelled.

Frank J. Coleman, U. S. D. J.

[fol. 2181] In United States Circuit Court of Appeals for the Second Circuit

Levering & Garrigues Company, Heddon Iron Construction Company, Hay Foundry & Iron Works, and McClintic-Marshall Company, Plaintiffs-Appellees,

vs.

Paul J. Morrin, Individually and as President of International Association of Bridge, Structural and Ornamental Iron Workers, et al., Defendants-Appellants

Before Manton, L. Hand and Swan, Circuit Judges

Appeal from the District Court of the United States for the Southern District of New York

Suit in equity against Paul J. Morrin, individually and as president of the International Association of Bridge, Structural and Ornamental Iron Workers, and others, to enjoin defendant labor unions and persons associated with them from interfering with the plaintiffs' business. From a final decree granting a permanent injunction, the defendants have appealed. Decree reversed.

Frank P. Walsh, Solicitor for Appellants; Harold Stern, of Counsel.

Edward Maxson, Solicitor for Appellees; Merritt Lane, of Counsel.

OPINION

SWAN, Circuit Judge:

The plaintiffs are four corporations, three of which were [fol. 2182] organized under the laws of New Jersey and the fourth under the laws of Pennsylvania. They were engaged in fabricating outside of, and erecting within, the State of New York, and elsewhere, structural iron and steel. The steel was specially fabricated for a particular building and each plaintiff engaged in the work of erecting its steel under a subcontract made with the general contractor for the building. The plaintiffs were members of the Iron League of New York, an association of employers engaged in the erection of steel, and since 1906 the members of this organization have carried on their work under what is known as the "open shop" method, that is, they select their employees without reference to membership or non-membership in a labor union. The defendants are Paul J. Morrin, "individually and as president" of International Association of Bridge, Structural and Ornamental Iron Workers (a voluntary labor organization hereinafter referred to as the International), and several local labor unions and their officers and agents. The bill of complaint charges that the defendants are attempting to compel the plaintiffs to operate upon a closed union shop basis and that to effectuate this purpose they have, among other alleged illegal acts, put into effect a boycott of the plaintiffs within the metropolitan area in and about New York City by persuading, through threats and intimidation, owners, architects and general contractors not to deal with the plaintiffs. The referee, who took and reported voluminous evidence, found as a fact that the boycotting charge was established and that the defendants intend to continue their efforts. His report was confirmed, and a permanent in- [fol. 2183] junction issued to restrain the defendants from attempting to induce owners, architects or general contractors to let no subcontracts to the plaintiffs for the erection of structural iron and steel on buildings being or to be erected in the metropolitan district of New York, by threatening that members of the unions associated with the International will refuse to work on buildings upon which the plaintiffs may have subcontracts, or by instigating sympathetic strikes on such buildings, or from otherwise at-

tempting by coercive pressure, threats or intimidation, or other unlawful means, to compel or influence owners, architects or general contractors not to patronize the plaintiffs. To reverse this decree and injunction the defendants appealed.

After argument upon the merits, this appeal was reargued, at the suggestion of the court, upon questions of jurisdiction, and to these questions attention must first be directed.

Jurisdiction was based primarily on diversity of citizenship. As already noted the plaintiffs were corporations of New Jersey and of Pennsylvania. The defendants against whom the decree was entered are the following: Paul J. Morrin, individually and as president of the International Association of Bridge, Structural and Ornamental Iron Workers; William J. McGinn, individually and as agent of said International; Local No. 40 of said International and Charles Massey, individually and as agent thereof; Local No. 361 of said International and Earl Calvert, individually and as agent thereof; and Local No. 197 of said International. The bill of complaint alleges that Morrin is a [fol. 2184] citizen of Missouri and each of the other individual defendants a citizen of New York. Each of the three locals above named is alleged to be "a subsidiary local" of the International and "a resident, citizen and inhabitant of the State of New York". Local No. 40 is alleged to have its headquarters in Manhattan and Local No. 361 in Brooklyn; Local No. 197 is alleged to have "jurisdiction over stone derrickmen in the City of New York". The International is alleged to be "a voluntary labor organization" and "a resident, citizen and inhabitant of the State of Missouri", but the International itself was not made a party deefndant, although the case has been argued on the assumption that it was. None of the foregoing allegations of citizenship was denied in the answer, except with respect to McGinn, who set forth that he was a citizen of Massachusetts instead of New York. Although the venue was wrong as to Morrin and McGinn, objection to venue was a privilege personal to them and was waived by their failure to object. Seaboard &c. Co. v. Chicago, &c. Ry. Co., 270 U. S. 363, 365.

When federal jurisdiction is grounded on diverse citizenship, it must affirmatively appear in the pleadings or from

facts clearly proven, that diversity of citizenship exists between all the plaintiffs on the one hand and all the defendants on the other. Strawbridge v. Curtiss, 3 Cranch 267; Thomas v. Board of Trustees, 195 U. S. 207. For this purpose the shareholders of a corporation are conclusively presumed to be citizens of the state in which it was incorpo- [fol. 2185] rated, and their citizenship is then attributed to the corporation. St. Louis & S. F. Ry. v. James, 161 U. S. 545, 554. The plaintiffs would have us apply a similar presumption as to unincorporated labor unions because under the doctrine of the Coronado case, 259 U. S. 344, they may be sued in the association name. This decision liberalized procedure in this respect but did not hold that jurisdiction was to be correspondingly extended. That an unincorporated labor union is suable as a legal entity implies nothing as to the citizenship of its members for purposes of federal jurisdiction. See Dobie, Federal Jurisdiction & Procedure, p. 198. Moreover, in seeking to attach a presumption of citizenship in the state in which these unincorporated associations have their headquarters, the plaintiffs ignore the settled rule that the citizenship of the shareholders of a corporation attaches to the state of incorporation and not to the state in which the corporation has its principal place of business. Shaw v. Quincey Mining Co., 145 U. S. 444; Seaboard &c. Co. v. Chicago &c. Ry. Co., 270 U. S. 363, 366. Although the Supreme Court has not yet passed upon the precise issue, its decisions as to a joint stock company (Chapman v. Barney, 129 U. S. 677), a limited partnership association (Great Southern Fire-Proof Hotel Co. v. Jones, 177 U. S. 449) and a board of trustees (Thomas v. Board of Trustees, 195 U. S. 207) are strongly persuasive against the contention. In the case last cited it was held that an allegation that an unincorporated board of trustees is a citizen is not sufficient, and that there must also be an allegation that each member of the group has a citizenship [fol. 2186] different from that of the plaintiff. In the case at bar neither allegation nor proof asserts that all the members of the defendant unions are citizens of states other than New Jersey and Pennsylvania. In Russell v. Central Labor Union, 1 F. (2d) 412 (E. D. Ill.), it was held that, despite the Coronado case, for purposes of federal jurisdiction the actual citizenship of the individual members of an unincorporated labor association was determinative; and

this court held the same in Ex parte Edelstein, 30 F. (2d) 636, cert. denied, 279 U. S. 851; 42 Harv. L. Rev. 1079. See also Irving v. Joint District Council, 180 F. 896, 898 (C. C. N. Y.); Wise v. Brotherhood of Locomotive F. and E., 252 F. 961, 965 (C. C. A. 8); 34 Yale L. J. 564; 38 Harv. L. Rev. 510; 5 Col. L. Rev. 246; 19 Ill. L. Rev. 596. We are not disposed to reverse our ruling in Ex. parte Edelstein. Therefore the mere allegation that each of the local unions was a citizen of a state other than those of the plaintiffs was not sufficient to afford a basis for jurisdiction founded on diverse citizenship.

Before determining the effect of the failure to allege or prove diverse citizenship between the plaintiffs and the defendant labor unions, it will be well to consider the plaintiffs' contention that jurisdiction of the district court may be sustained upon another ground. Paragraph 18 of the bill of complaint alleges that each of the plaintiffs is engaged in interstate commerce and that the defendants have entered into an illegal conspiracy in restraint of such commerce; paragraph 20 alleges a violation of the plaintiffs' constitutional rights; and paragraph 21 invokes jurisdic-[fol. 2187] tion under the constitution and laws of the United States. These allegations the answer denied. Upon the issues of interference with interstate commerce and violation of the plaintiffs' constitutional rights, the referee found in favor of the defendants, and his conclusion was affirmed by the district court.

That the decision on these points was right is clear beyond dispute. The theory of the 18th paragraph of the bill is that since the steel to be erected by the plaintiffs in New York is shipped in from other states, the defendants' prevention of erection is an interference with interstate commerce. There is neither allegation nor proof that the activities of the defendants were in any way motivated by a desire to restrain the interstate trade of the plaintiffs. It is true that to the extent that the defendants succeed in preventing the plaintiffs from procuring subcontracts with general contractors for buildings to be erected in New York, the plaintiffs will bring in from other states smaller quantities of steel than they otherwise would, but such an interference is too indirect, incidental and remote to constitute a violation of the federal anti-trust laws. Industrial Association v. United States, 268 U. S. 64, 77, 82; Bedford

Cut Stone Co. v. Stone Cutters Assn., 274 U. S. 37, 46; United Leather Workers v. Herkert, 265 U. S. 457; United Mine Workers v. Coronado Co., 259 U. S. 344, 410; Aeolian Co. v. Fischer, 29 F. (2d) 679 (C. C. A. 2); and see Anderson v. Shipowners Assn., 272 U. S. 359, 364, where it is said that building is not commerce and "the fact that the materials to be used are shipped in from other states does not make building a part of such commerce". The acts of the [fol. 2188] defendants were directed toward preventing the use of the steel after it reached New York and affected the transportation of it only indirectly. Even less can be said in support of the contention that constitutional rights of the plaintiffs were violated; indeed, this point was not even briefed on this appeal.

But the plaintiffs urge that regardless of how these issues were decided, the assertion of a bona fide claim that the controversy involved the constitution and laws of the United States gave the court jurisdiction to decide all questions involved in the case. They rely upon the familiar principal, reasserted with the citation of many authorities in Siler v. Louisville & Nashville R. R. Co., 213 U. S. 175, where it is said at page 191:

"The Federal questions, as to the invalidity of the state statute because, as alleged, it was in violation of the Federal Constitution, gave the Circuit Court jurisdiction, and, having properly obtained it, that court had the right to decide all the questions in the case, even though it decided the Federal questions adversely to the party raising them, or even if it omitted to decide them at all, but decided the case on local or state questions only."

This principle has been frequently applied in subsequent cases. Louisville & N. R. R. Co. v. Garrett, 231 U. S. 298; Greene v. Louisville & Int. R. R. Co., 244 U. S. 499; Lincoln Gas Co. v. Lincoln, 250 U. S. 256; Davis v. Wallace, 257 U. S. 478; Southern Ry. Co. v. Watts, 260 U S. 519; Atlantic Coast Line Co. v. Daughton, 262 U. S. 413; Chicago & Great W. R. R. Co. v. Kendall, 266 U. S. 94. Yet it is not of universal application, for there is another familiar line [fol. 2189] of cases, where a charge of unfair competition is joined with a charge of patent or trademark infringement, in which, if the federal question is decided adversely to the plaintiff and no diversity of citizenship exists, the courts

have held that there is no federal jurisdiction to pass upon the issue of unfair competition. Of such a situation the Supreme Court said in Elgin Watch Co. v. Illinois Watch Co., 179 U. S. 665, 677, that " if the trademark were not lawfully registered, then jurisdiction could not be maintained". And this is substantially repeated in Leschen Rope Co. v. Broderick, 201 U. S. 166, and Stark Bros. Co. v. Stark, 255 U. S. 50, 52. See also Standard Paint Co. v. Trinidad Asph. Co., 220 U. S. 446, 456; Geneva Furniture Mfg. Co. v. Karpen & Bros., 238 U. S. 254. Numerous lower court authorities, mostly to the same effect, are gathered in Judge Denison's interesting opinion in Vogue Co. v. Vogue Hat Co., 12 F. (2d) 991 (C. C. A. 6); see also Ingrassia v. A. C. W. Mfg. Corp., 24 F. (2d) 703 (C. C. A. 2); Shiebel Toy & Novelty Co. v. Clark, 217 F. 760 (C. C. A. 6); Kasch v. Cliett, 297 F. 169 (C. C. A. 5). Nowhere, so far as we are advised, has the Supreme Court alluded to the limitation which its pronouncement in the Elgin and Leschen cases impliedly puts upon the general principle of the Siler case that a jurisdiction once acquired extends to all questions in the case. In the absence of an authoritative decision to point out the line of differentiation, we must attempt to harmonize the two lines of cases as best we may.

When a complaint challenges the validity of a state statute as infringing the federal constitution, questions depending upon the local law, such as the true interpretation [fol. 2190] of the statute, or its validity under the state constitution, underlie the very foundation of the plaintiff's cause of action. Such questions are necessarily involved in the controversy presented to the federal court. Compare Barney v. City of New York, 193 U. S. 430, which in so far as it implies the contrary apparently is no longer the law. Raymond v. Chicago Union Traction Co., 207 U. S. 20; Home Tel. & Tel. Co. v. Los Angeles, 227 U. S. 278; Iowa-Des Moines Nat. Bank v. Bennett, 284 U. S. 239, 246. See 40 Harv. L. Rev. 969. The court must have power to decide these preliminary questions in order to reach the ultimate question involving the federal constitution, and it may well place its decision upon such local grounds rather than the federal one if it prefers to avoid a decision of the latter, or even though it does decide it and adversely to the plaintiff. Such, if we understand it, is the ratio decidendi of the Siler case and the others following it where a substan-

tial federal constitutional question is asserted. When, however, the complaint charges the defendant with conduct alleged to violate both a federal statute, such as the trademark or patent act, and also the local law as to unfair competition, the local question is independent of the federal question and is in no sense the foundation of the plaintiff's asserted federal right. Hence if the latter is found not to exist, there is no basis for ascribing to the court a jurisdiction to decide the independent non-federal question. Cf. Tullar & Tullar v. Ill. Central R. R. Co., 213 F. 280, 283 (N. D. Ia.). This we believe to be the distinction between the two lines of cases under discussion. We [fol. 2191] think it is consistent with the actual decisions of the Supreme Court, although no authority has been found which has clearly enunciated it, and it must, indeed, be recognized as scarcely consistent with some of the views expressed in Judge Denison's learned opinion in Vogue Co. v. Vogue Hat Co., 12 F. (2d) 991 (C. C. A. 6). Cf. 40 Harv. L. Rev. 298. In General Investment Co. v. Lake Shore &c. Ry. Co., 260 U. S. 261, there were as here two causes of action, one, under the Anti-Trust laws, the other, under the state law. There was federal jurisdiction over the second because of diverse citizenship. The Supreme Court did not suggest that the jurisdiction over the second rested upon that over the first. Its decision at most goes no further than that a cause of action between diverse citizens would follow into the district court a cause of action arising under laws of the United States when the removal was upon the second ground alone. That is quite another question from the substantive jurisdiction over the second cause of action; moreover, the Supreme Court actually disposed of the second cause of action on the merits, while dismissing the first for lack of jurisdiction. Obviously, therefore, however the second got into the district court, the power to adjudicate upon it could not be ancillary to jurisdiction over the first. Judge Denison, anticipating his view expressed in Vogue Co. v. Vogue Hat Co., supra, did invoke the Siler case, but even then as a dictum, because he thought that federal jurisdiction existed quite independently (269 F. 235, 241), just as the Supreme Court did. The case does not, therefore, stand against our view. It is confirmed, moreover, by the language of Mr.

[fol. 2192] Justice Holmes in Stark Bros. Co. v. Stark, 255 U. S. 50, 51:

"The infringement that is sued for is infringement of a registered trade-mark, not infringement of a trade-mark. That is the plain meaning of the above words and the necessary scope of this suit since that is the scope of the jurisdiction of the District Court. A Leschen & Sons Rope Co. v. Broderick & Bascom Rope Co., 201 U. S. 166, 172. It seems very plain that the plaintiff had a cause of action outside the statute, but that would have to be asserted elsewhere, as the suit was between citizens of the same State. The statute alone gave the right to come into this Court of the United States. Coming in to assert its statutory rights, we will assume in the plaintiff's favor that it could recover for unfair competition that was inseparable from the statutory wrong, but it could not reach back and recover for earlier injuries to rights derived from a different source."

Compare Pittsburg & W. Va. Ry. v. United States, 281 U. S. 479, 488; see also Geneva Furniture Co. v. Karpen, 238 U. S. 254, 259.

In the case at bar the plaintiffs assert two independent causes of action. Primarily they rest jurisdiction upon diversity of citizenship (without, as has been shown, proper allegations or proof thereof) and complain of an alleged illegal boycott as a tortious interference with rights which are not derived from federal statute or constitution; and secondarily, and almost as a make-weight, they allege interference with interstate commerce and apparently assert a right to sue under the federal anti-trust statutes. The additional claim of a violation of constitutional rights is so unsubstantial that no further mention of it is required. Here the non-statutory right primarily relied upon is in no sense the foundation of the right asserted under the federal statute. The two claims are as independent of one another [fol. 2193] as were the statutory trade-mark infringement and the unfair competition in trade which were joined in a single complaint in the Leschen case and similar decisions above discussed. The rule of those cases rather than that of the Siler case should govern.

There is another consideration which might be urged as leading to the same result even if the Siler rule were held

applicable. Concededly the alleged claim of federal jurisdiction must be substantial and not frivolous. Minnesota v. No. Securities Co., 194 U. S. 48. In other words, a plaintiff may not base a claim for relief upon a federal ground which has been authoritatively decided against him, and still demand that the court pass upon other questions of which it would have no jurisdiction except for the claim based on federal constitution or statute. See Bianchi v. Morales, 262 U. S. 170, 172; Niles-Bement-Pond Co. v. Iron Moulders Union, 254 U. S. 77, 82; Colonial Drug & Sales Co. v. Western Products Co., 54 F. (2d) 216, 219 (C. C. A. 10); Wallace Ranch Water Co. v. Rd. Commission, 47 F. (2d) 810 (C. C. A. 9); Postal Tel. Cable Co. v. Nolan, 240 F. 754 (D. Mont.); Silvey v. Commissioners, 273 F. 202, 207 (S. D. Ohio). It may well be doubted whether the plaintiffs' claim under the anti-trust laws could be deemed substantial. They urge that their bill was filed in March 1925 and that the situation must be looked at as of that time rather than in the light of subsequent decisions. See Boston Store v. Am. Graphophone Co., 246 U. S. 8, 26; Mich. Central R. R. Co. v. Vreeland, 227 U. S. 59, 63. We are inclined to believe that the question could not properly be thought doubtful even when the bill was filed, for the effect of an indirect, incidental and remote interference with inter-[fol. 2194] state commerce such as that alleged in the case at bar had already been considered in United Mine Workers v. Coronado Co., 259 U. S. 344, 410 and United Leather Workers v. Herkert, 265 U. S. 457, as was pointed out in the Industrial Association case, 268 U. S. 64, 80; but we do not decide this point nor rest our decision upon it.

For the foregoing reasons we conclude that jurisdiction must depend on diverse citizenship and that while the allegations as to this were sufficient with respect to the individual defendants they were insufficient as to the defendant labor unions. What judgment, then, is this court to render?

Where several plaintiffs sue several defendants in a federal court and jurisdiction rests on diverse citizenship, each plaintiff must be capable of suing each defendant. Strawbridge v. Curtis, 3 Cranch 267. Nor is it material that the plaintiffs need not have sued jointly in a case where they have elected to do so. Peninsular Iron Co. v. Stone, 121 U. S. 631. The same rule is equally applicable

where a plaintiff sues joint and several tort feasors. That he was not compelled to join the defendants whose presence destroys federal jurisdiction does not aid him, unless, as is not the case here, those defendants are merely formal parties. Danks v. Gordon, 272 F. 821 (C. C. A. 2); Matthew v. Coppin, 32 F. (2d) 100 (C. C. A. 9); Wetherby v. Stinson, 62 F. 173 (C. C. A. 7); Pirie v. Tvedt, 115 U. S. 41. If the party improperly joined is not indispensable, the jurisdictional defect may be cured by a motion in the trial [fol. 2195] court to amend and dismiss as to him. Horn v. Lockhart, 17 Wall. 570; Hopkins v. Oxley Stave Co., 83 F. 912 (C. C. A. 8); Mason v. Dullagham, 82 F. 689 (C. C. A. 7); Smith v. Consumers' Cotton-Oil Co., 86 F. 359 (C. C. A. 5); Irving v. Joint District Council, 180 F. 896 (C. C. N. Y.). Such a motion cannot be made in an appellate court. Denny v. Pironi, 141 U. S. 121. Section 274 (c) of the Judicial Code (28 U. S. C. A. Sec. 399) permits correction of the pleadings to conform to the proof, but that does not avail here for it does not appear that in fact the necessary diversity existed. An appellate court must reverse for want of jurisdiction, but may give leave to the trial court to permit correction by amendment of the pleadings. Halsted v. Buster, 119 U. S. 341; Thomas v. Anderson, 223 F. 41 (C. C. A. 8); Watson v. Bonfils, 116 F. 157 (C. C. A. 8); Matthew v. Coppin, supra; Grove v. Grove, 93 F. 865 (C. C. Kans.). Although this court apparently dismissed, in toto in Danks v. Gordon, supra, and Carpenter v. Carden, 294 F. 575 [see also Devost v. Twin State G. & E. Co., 205 F. 349 (C. C. A. 1)], we think this is not necessary here. The district court should have leave to allow the plaintiffs to amend by dismissing as against the locals, or by inserting appropriate allegations to show that none of their members was a citizen of New Jersey or Pennsylvania when the bill was filed, if such be the fact. If the former alternative be adopted, there is authority for allowing the record to stand as already taken, and to enter a decree thereon against the individuals, provided it appears that all the evidence remains equally admissible with the dismissed defendants out. Interstate Refineries, Inc., v. [fols. 2196 & 2196½] Barry, 7 F. (2d) 548, 550 (C. C. A. 8); Atchison T. & S. F. Ry. Co. v. Gilliland, 193 F. 608 (C. C. A. 9); Fitchburg R. Co. v. Nichols, 85 F. 869 (C. C. A. 1); Maddox v. Thorn, 60 F. 217 (C. C. A. 5); Williams v. Great

So. Lumber Co., 13 F. (2d) 246 (E. D. La.), reversed on other grounds in 17 F. (2d) 468, 470 (C. C. A. 5). This is a matter for the district court to determine; as is also the question whether recent legislation by Congress (Public Act No. 65 approved March 23, 1932) has any application to further proceedings in this suit.

Decree reversed with directions to dismiss the complaint without prejudice, for lack of jurisdiction, unless the plaintiffs shall amend to correct the jurisdictional defect.

No costs of appeal awarded either party.

[fol. 2197] In United States Circuit Court of Appeals, Second Circuit

Present: Hon. Martin T. Manton, Hon. Learned Hand, Hon. Thomas W. Swan, Circuit Judges.

Levering & Garrigues Company et al., Plaintiffs-Appellees,

vs.

Paul J. Morrin, Individually, etc., et al., Defendants-Appellants

Decree—Filed Aug. 30, 1932

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be, and it hereby is, reversed, with directions to dismiss the complaint without prejudice, for lack of jurisdiction, unless the plaintiffs shall amend to correct the jurisdictional defect, without costs of the appeal to either party.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fols. 2198 & 2199] [File endorsement omitted.]

[fol. 2200] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 7, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, limited to the question of Federal jurisdiction other than questions relating to diversity of citizenship.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 2201] SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO RECORD—Filed Feb. 6, 1933

It is stipulated that the record in the above entitled cause consist of the following:

1. Bill of Complaint with Exhibit 1 and Exhibit 2 (excluding the affidavits annexed to the bill).
2. Answer and counterclaim of the defendants.
3. Reply to counterclaim.
4. Order of Reference.
5. Report and decision of the Master.
6. The following statement:

Defendants filed 29 exceptions to the Master's Report, no one of which raised any question as to the jurisdiction of the court. Plaintiffs filed nine exceptions to the Master's Report, the 8th of which reads as follows:

[fol. 2202] "To the finding of the Master that the conduct of defendants did not amount to a conspiracy in restraint of interstate trade or commerce within the meaning of the Statutes of the United States, and that the conduct of the defendants was illegal upon that ground."

7. Final decree of the United States District Court.
8. The following statement:

On March 31, 1930 defendants below took an appeal to the United States Circuit Court of Appeals for the 2nd Circuit and filed 18 assignments of errors, no one of which raised any question as to the jurisdiction of the District Court.

Argument was had in the Circuit Court of Appeals, appellants defendants arguing the case under four heads:

(a) Organization of the International and its relation with other defendants do not constitute an unlawful combination.

(b) The means employed prior to May 1, 1924 are not unlawful.

(c) The means employed by the Union subsequent to May 1, 1924 were lawful under which subhead the defendants contended that:

1. Picketing was lawful.

2. The persuasion of others by means of letters and personal calls to favor firms fair to the defendants was lawful.

3. It was lawful for the International to order its Local No. 52 on strike.

4. It was not unlawful for union workmen to refuse to [fol. 2203] work on jobs on which non-union labor was employed.

(d) The decree violates the rights guaranteed to the defendants by the Constitution of the State of New York and the Fifth and Fourteenth amendments of the Constitution of the United States.

(e) A court of equity will not grant an injunction in a case where no irreparable injury is shown.

Plaintiffs appellees, besides replying to defendants points, argued under their point 6 that: The decree below may be sustained upon the ground that appellants were engaged in a conspiracy in restraint of interstate trade, to which point it devoted six pages of its brief.

The main brief for plaintiffs submitted to the Master in the proceedings before the Master contained as its point 4: "Defendants are engaged in a conspiracy in restraint of interstate commerce and upon this ground an injunction should go", to which eleven pages were devoted; defendants original brief before the Master contained twelve pages upon the subject; plaintiffs brief in reply contained twelve pages on the subject.

The Master held in his report and decision (fols, 6038-6042) that there was no actionable interference with interstate commerce. Upon the argument of the appeal the Circuit Court on its own motion raised the question of its jurisdiction to entertain the cause.

(f) Subsequently a re-argument was ordered limited as to the question as to whether the United States District Court had jurisdiction.

[fols. 2204 & 2205] (g) Upon the re-argument plaintiffs second point was:

"Jurisdiction of the District Court was not invoked solely upon the ground of diversity of citizenship but also upon the ground that the controversy arose under the constitution and laws of the United States (section 24, Judicial Code); (section 41, Title 28, Judicial Code U. S. C. A., subdivision A), and the Court once having acquired jurisdiction upon that ground did not lose jurisdiction because the Federal question was decided adversely to plaintiffs, but properly proceeded to render the proper decree as between the parties, irrespective of the Federal question involved."

9. The opinion of the Circuit Court of Appeals.

10. The mandate of the Circuit Court of Appeals.

11. A statement as follows:

No motion was made to strike the allegations of the bill counting upon an alleged conspiracy in restraint of interstate trade.

Approximately 1800 printed pages of the record in the Circuit Court of Appeals contained testimony and exhibits which had been before the Master, upon which testimony and exhibits he reached a conclusion as upon the facts and law as stated in his report and decision.

McCane, Attorney for Petitioners in Certiorari.
Frank P. Walsh, Attorney for Respondents.

[fol. 2206] [File endorsement omitted.]

Endorsed on cover: File No. 37,120. U. S. Circuit Court of Appeals, Second Circuit. Term No. 423. Levering & Garrigues Company, Hedden Iron Construction Company, McClintic-Marshall Company, et al., petitioners, vs. Paul J. Morrin, individually and as President of International Association of Bridge, Structural and Ornamental Iron Workers, et al. Petition for a writ of certiorari and exhibit thereto. Filed October 3, 1932. File No. 37,120.